# UNITED STATES DISTRICT COURT

	Western	District of	Washington	
CHRISTINE O. GREGOIRE, Governor o State of Washington,	f the			
	Plaintiff,		SUMMONS IN	A CIVIL CASE
V.				
DONALD H. RUMSFELD, in his official of Secretary of Defense; ANTHONY J. PRIN official capacity as Chairman of the Defe Closure and Realignment Commission; a BILBRAY, PHILLIP E. COYLE, HAROLD GEHMAN, JR., JAMES V. HANSEN, JAM LLOYD W. NEWTON, SAMUAL K. SKIN SUE ELLEN TURNER, in their official car of the Defense Base Closure and Realign	NCIPI, in his nse Base and JAMES H. W. MES T. HILL, NER, and pacities as me	embers	E NUMER: $05$	<b>558</b> 3 %
TO: (Name and address of De	Defendan	ts.		
James H. Bilbray 2005 Defense Base Closure and Re 2521 S. Clark St., Suite 600 Arlington, VA 22202	ealignment C	Commission		
YOU ARE HEREBY SUMMO	ONED and rec	quired to serve	on PLAINTIFF'S ATTO	RNEY (name and address)
Sara J. Finlay, Senior Counsel Office of the Attorney General Government Operations Division PO Box 40108 Olympia, WA 98504-0108				
an answer to the complaint which is se of this summons on you, exclusive of th for the relief demanded in the complain Clerk of this Court within a reasonable	e day of servi	ice. If you fail ver that you se	to do so, judgment by def rve on the parties to this	
BRUCE RIFK	IN		SEP - 7 000	j
CLERK		DATE		
(By) DEPUTY CLERK	mer			

## **CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating e civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

i. (a) PLAINTIFF	S		DEFENDANI	<b>S</b>	
Gregoire, Ch	ristine O. the State of Washington		See Attached I	List	
	nce of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF C	Thurston CASES)	County of Residen	DUIE (INVLS. PLEM IFREASE INTERNATION COSE	USE THE DOCATION OF THE
Office of the At 98504-0108, (3	me, Address, and Telephone Numb storney General, PO Box 50) 586-2436, Sara J. Fin SDICTION (Place an "X" is 3 Federal Question (U.S. Government	40108, Olympia, Walay, Sr. Counse	PL' COUR	PRINGHAL PARTIE	S(Place an "X" in One Box for Plaintif and One Box for Defendant) PTF DEF Principal Place
U.S. Government Defendant	Diversity     (Indicate Citizensh)	ip of Parties in Item III)			Principal Place
			Citizen or Subject of a Foreign Country	13 13 Foreign Nation	06 06
IV. NATURE OF SU					
ESSENCORDA CONTRACTOR DE C			e dorom creations	S CONTRACTOR SERVICE S	
110 Insurance   120 Marine   130 Miller Act   130 Miller Act   140 Negotiable Instrument   150 Recovery of Overpayment & Enforcement of Judgmen   1 Medicare Act   2 Recovery of Defaulted Student Loans (Excl. Veterans)   153 Recovery of Overpayment of Veteran's Benefits   160 Stockholders' Suits   190 Other Contract   195 Contract Product Liability   196 Franchise   210 Land Condemnation   220 Foreclosure   230 Rent Lease & Ejectment   240 Torts to Land   245 Tort Product Liability   290 All Other Real Property	320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle Product Liability 355 Motor Vehicle Product Liability 360 Other Personal Injury	550 Civil Rights	610 Agriculture   620 Other Food & Drug   625 Drug Related Seizure of Property 21 USC 881   630 Liquor Laws   640 R.R. & Truck   650 Airline Regs.   660 Occupational Safety/Health   690 Other   710 Fair Labor Standards Act   720 Labor/Mgmt. Relations   730 Labor/Mgmt. Reporting & Disclosure Act   740 Railway Labor Act   790 Other Labor Litigation   791 Empl. Ret. Inc. Security Act	422 Appeal 28 USC 158   423 Withdrawal 28 USC 157   423 Withdrawal 28 USC 157   420 Copyrights   320 Copyrights   330 Patent   840 Trademark   405 Capyrights   862 Black Lung (923)   863 DIWC/DIWW (405(g))   864 SSID Title XVI   865 RSI (405(g))   870 Taxes (U.S. Plaintiff or Defendant)   871 IRS—Third Party 26 USC 7609	470 Racketeer Influenced and Corrupt Organizations  480 Consumer Credit  490 Cable/Sat TV  810 Selective Service
Ø1 Original □2 Re	ite Court Ap	pellate Court	Reinstated or another Reopened (specif		Appeal to District Judge from Magistrate Judgment
VI. CAUSE OF ACTIO	Brief description of cause	e:	ing (Do not elte jurisdictional. § 2687 note, 32 U.S.C.	e U.S. Statutes and U	
VII. REQUESTED IN COMPLAINT:	CHECK IF THIS IS UNDER F.R.C.P. 23		DEMAND \$	CHECK YES only i  JURY DEMAND:	f demanded in complaint:
/III. RELATED CASE( IF ANY	(See instructions):	DGE		DOCKET NUMBER	
7/2005 FICE USE ONLY		SIGNATURE OF ATTORN	NEY OF RECORD		
RECEIPT # AMO	DUNT	APPLYING IFP		MAG. JUDO	GE

## **DEFENDANTS**

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense; PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and BILBRAY, JAMES H.

COYLE, PHILLIP E.

GEHMAN, JR., HAROLD W.

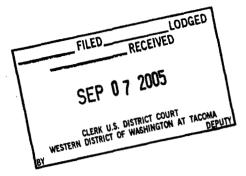
HANSEN, JAMES V.

HILL, JAMES T.

NEWTON, LLOYD W.

SKINNER, SAMUAL K. and

TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and Realignment Commission,



## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CHRISTINE O. GREGOIRE, Governor of the State of Washington,

Plaintiff.

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DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as members of the Defense Base Closure and Realignment Commission,

Defendants.

№C05 558\$

COMPLAINT

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

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capacities as members of the Defense Base Closure and Realignment Commission, as follows:

### I. NATURE OF THE CASE

- 1. This case arises out of defendants' attempts, unilaterally and without seeking or obtaining approval from the Governor of the State of Washington, to fundamentally change units of the Washington Air National Guard under the guise of a recommendation made pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign Fairchild Air Force Base" contains the following four elements, which will hereafter be collectively referred to as the "Proposed Realignment":
  - the 141st Air Refueling Wing of the Washington Air National Guard will (a) "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane, Washington ("Fairchild");
  - all eight of the KC-135R aircraft assigned to Washington Air National Guard's 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard Refueling Wing;
  - the 256<sup>th</sup> Combat Communications Squadron of the Washington Air National (c) Guard currently located at the Four Lakes Communications Station outside Cheney, Washington will be "relocated" to Fairchild; and
  - the 242<sup>nd</sup> Combat Communications Squadron of the Washington Air National Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to Fairchild.
- 2. Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment: (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of federal laws independent of the BRAC Act that expressly grant rights to the State of

Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and (c) infringes on the right of the State to maintain an organized militia in violation of the Second Amendment to the United States Constitution.

## II. JURISDICTION AND VENUE

- 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.
- 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391 because the official residence of the Governor of the State of Washington is in the Western District of Washington.

### III. PARTIES

- 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and brings this action in her official capacity and on behalf of the State. Pursuant to the Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020), Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are actively in the service of the United States.
- 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense of the United States and, pursuant to the BRAC Act is authorized to make recommendations for the closure and realignment of military installations in the United States to the Defense Base Closure and Realignment Commission, and to implement those recommendations ultimately approved. He is sued in his official capacity only.
- 7. Defendant Anthony J. Principi has been named by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC Commission"). He is sued in his official capacity only.

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8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner have been named by the President of the United States to be members of the BRAC Commission. They are sued in their official capacities only.

### IV. THE BRAC ACT

- 9. The stated purpose of the BRAC Act is to "provide a fair process that will result in the timely closure and realignment of military installations inside the United States." BRAC Act § 2901(b).
  - 10. As used in the BRAC Act, the term "military installation" is defined as:

a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

BRAC Act § 2910(4).

11. As used in the BRAC Act, the term "realignment" includes:

any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

BRAC Act § 2910(5).

12. Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the Department of Defense was required to publish in the Federal Register and transmit to the congressional defense committees and the BRAC Commission a "list of the military installations inside the United States that the Secretary recommends for closure or realignment" consistent with the BRAC Act, the force-structure plan and military value and Defendant Rumsfeld submitted his BRAC other criteria established thereunder. recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in the May 16, 2005 Federal Register.

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- 13. Defendant Rumsfeld's BRAC recommendations included the Proposed Realignment an issue in this case.
- 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is empowered to consider the recommendations of the Secretary of Defense and make recommendations to the President of the United States for the closure and realignment of military installations consistent with the BRAC Act.
- 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27, 2005 to consider and make the base closure and realignment recommendations it would forward to the President by September 8, 2005.
- 16. On August 26, 2005, the BRAC Commission voted to adopt defendant Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its recommendations for military installation closure and realignment to the President by September 8, 2005, including the Proposed Realignment.
- 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.
- 18. If the President disapproves any of the BRAC Commission's recommendations, the BRAC Commission has until October 20, 2005 in which to transmit revised recommendations to the President. BRAC Act §§ 2903, 2914.
- 19. If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. BRAC Act §§ 2903, 2914.
- If the President approves either the original or revised recommendations, he 20. must send the approved list and his certification to Congress. If the President approves a revised list, his approval and certification to Congress must occur by November 7, 2005. BRAC Act § 2903, 2914.
- 21. If Congress does not enact a resolution disapproving the approved recommendations within 45 legislative days after receiving them from the President, defendant

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Rumsfeld must close and realign all military installations as recommended. BRAC Act § 2904(a).

## V. NATURE OF THE NATIONAL GUARD

- 22. The National Guard has a dual nature, comprising both units of state militias and a part of the federal armed forces when those units are called into federal service. The National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the United States Constitution. The Washington National Guard constitutes a portion of the reserve component of the armed forces.
- 23. States have the right to control the National Guard when not in federal service. Members of the National Guard serve in the state militia under the command of the Governor unless they are called into federal service.
- 24. The National Guard is the only military force shared by the states and the federal government, and ready to carry out missions for both state and federal purposes.
- 25. The balance struck by Congress between the federal and state nature of the National Guard is reflected in the various statutes requiring the consent of the Governor for decisions which change the personnel and forces available for state duties and the way in which such consent is obtained.
- 26. Currently and during the BRAC process, the Washington Air National Guard's 141<sup>st</sup>, 256<sup>th</sup> and 242<sup>d</sup> units have not been federally mobilized into Title 10 federal status.

### VI. THE PROPOSED REALIGNMENT

27. Included in defendant Rumsfeld's base closure or realignment list was the following recommendation regarding Fairchild Air Force Base and referred to herein as the Proposed Realignment:

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141<sup>st</sup> Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

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Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, Iowa. The 256<sup>th</sup> Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

70 FR 28046, May 16, 2005. See Exhibit A.

- 28. The BRAC Commission voted to approve the basic elements of the Proposed Realignment and include the recommendation in its report to the President for the 2005 closure or realignment of military installations pursuant to the BRAC Act.
- 29. It is expected that the BRAC Commission's report to the President due by September 8, 2005 will include a recommendation on the Proposed Realignment substantially similar to the language contained in defendant Rumsfeld's list as published in the Federal Register.
- 30. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to the Proposed Realignment.
- 31. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to make a change in the location, branch, organization or allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications Squadron, the 242<sup>d</sup> Combat Communications Squadron, or any unit of the Washington Air National Guard.
- 32. If the Governor had been requested during the BRAC process to consent to the Proposed Realignment, Governor Gregoire would not have done so.
- 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire expressed her "strong objections to the Department of Defense's recommendations to the [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling Wing" and stated she "emphatically [did] not consent to the realignment of the 141st Air

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Refueling Wing or the removal, relocation, or reassignment of the 141st, unit equipped primary assigned KC-135 aircraft." See Exhibit B.

- 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for such actions." See Exhibit B.
- 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his "proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution." See Exhibit B.
- 36. In recommending the Proposed Realignment, the BRAC Commission contravened the legal advice provided by its own legal counsel in a memorandum dated July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch, organization or allotment, or relocation or withdrawal of a National Guard unit without the consent of the Governor where the unit was located.

# Associating the 141st Air Refueling Wing

- 37. The first portion of the Proposed Realignment would "associate" Washington Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing at Fairchild.
- 38. In his Federal Register notice, Defendant Rumsfield does not define or explain what is meant by his recommendation that the Washington Air National Guard's 141st Air Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also does not define the term "associate".
- The 141st Air Refueling Wing is a Washington Air National Guard unit located 39. entirely within the State of Washington, at Fairchild.
- The 141st Air Refueling Wing is a self-sustaining unit used for both federal and 40. state missions. Members of the 141st have engaged in international, national, regional, state

and local missions, including homeland security and emergency response activities. The 141<sup>st</sup> has been ordered into state active duty status by prior governors of the State to respond to the eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local law enforcement.

41. If the 141<sup>st</sup> Air Refueling Wing were to "associate" with the Air Force's 92d Air Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither the Governor nor the Adjutant General of the Washington Military Department would maintain operational control over the day to day operations of the 141<sup>st</sup>.

# Distributing the 141<sup>st</sup>'s KC-135s

- 42. The <u>second</u> portion of the Proposed Realignment recommends that all eight of the 141<sup>st</sup> Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air National Guard Refueling Wing.
- 43. This recommendation would leave the Washington Air National Guard without any primary authorized fixed wing aircraft.
- 44. Without its eight KC-135R aircraft, the Washington Air National Guard's ability to control required aircraft training missions is eliminated, its ability to maintain air crew readiness is restricted, and its ability to recruit and retain officers and enlisted members within the Washington Air National Guard is substantially reduced.
- 45. The Proposed Realignment of the 141<sup>st</sup> would strip the Governor of all direct emergency access to the 141<sup>st</sup>'s KC-135R aircraft for tactical airlift missions in response to local, state, regional and national emergencies. In addition to refueling capabilities, the KC-135s can be used to meet transport and cargo needs. The 141<sup>st</sup> Air Refueling Wing and its KC-135 aircraft have been integral components of the State's planned response to wildfires, floods and other natural disasters in the State.

- 46. The Proposed Realignment of the 141<sup>st</sup> would prevent the Governor from carrying out the constitutional and statutory responsibilities of her office to provide for public safety and the security of the homeland.
- 47. In order to provide needed help responding to the devastating effects of Hurricane Katrina, the Governor has approved use of the KC-135 aircraft and members of the 141<sup>st</sup> Air Refueling Wing. The Governor's September 2, 2005 activation of the Washington Air National Guard specifically authorizes use of the KC-135 aircraft. To date, the 141<sup>st</sup> and its KC-135s have moved over 500 National Guard members, 50 tons of cargo and engaged in 35 flying sorties to New Orleans and Gulfport in response to Hurricane Katrina, and these numbers will increase. The Proposed Realignment would prevent the Governor from extending this type of assistance to states under the National Response Plan and the national Emergency Management Assistance Compact.

# Relocating the 256th

- 48. The <u>third</u> portion of the Proposed Realignment recommends that Washington Air National Guard's 256<sup>th</sup> Combat Communications Squadron, currently wholly located at the Four Lakes Communication Station outside Cheney, Washington, be "relocated" to Fairchild.
- 49. Four Lakes Communications Station is a federally owned facility under license to the State of Washington.
- 50. Relocating the 256<sup>th</sup> to Fairchild without the Governor's consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia.

# Relocating the 242<sup>d</sup>

- 51. The <u>fourth</u> portion of the Proposed Realignment recommends that Washington Air National Guard's 242<sup>nd</sup> Combat Communications Squadron, currently wholly located at Geiger Field in Spokane, Washington, be "relocated" to Fairchild.
- 52. Geiger Field is not a federally owned facility, it is owned by the State of Washington.

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53. Relocating the 242<sup>d</sup> from state-owned land to Fairchild without the Governor's consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia, and impair her ability to interact with and access one of her state National Guard units.

### VII. FIRST CAUSE OF ACTION

## **Exceeds BRAC Act Authority**

- 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53, inclusive, as though fully set forth herein.
- 55. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or location of the 141st, 256th and 242d units, and the removal and transfer of the Washington Air National Guard's KC-135 aircraft.
- 56. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped or organized.
- 57. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the organization of the Washington Air National Guard.
- Defendants' recommendations to "associate" the 141st unit and "distribute" the 58. KC-135s assigned to it are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- Defendants' recommendations to relocate the 256th unit and the 242d unit are 59. not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- 60. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants do not have the authority under the BRAC Act

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to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants' authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.

61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

## VIII. SECOND CAUSE OF ACTION

## **Violates 32 U.S.C. § 104**

- 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61, inclusive, as though fully set forth herein.
- 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the units and headquarters of its National Guard".
- 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor".
- The State has fixed the locations of the 141st, 256th and 242d units, which are 65. units located entirely with the State.
- 66. Defendants' Proposed Realignment would change the location, branch, organization and/or allotment of the 141st, 256th and the 242d, and the Governor has not granted her approval for such actions.
- 67. Defendants' Proposed Realignment, without gubernatorial consent, violates 32 U.S.C. § 104.
- 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment, without first obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

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may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.

69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

### IX. THIRD CAUSE OF ACTION

## Violates the Second Amendment

- 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69, inclusive, as though fully set forth herein.
- 71. Under the Constitution of the United States, authority over the military is divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second Amendment states: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II. The guarantee of the Second Amendment regarding states' rights to a well-regulated militia was made for the purpose of assuring the continuation and effectiveness of state militia.
- 72. Proposed Realignment would infringe upon the State's Defendants' constitutional right to maintain a well regulated militia, and violates the Second Amendment.
- 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional; that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.
- 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

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## X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against defendants and that the Court grant the following relief:

- A. An Order declaring that defendants' Proposed Realignment exceeds their statutory authority under the BRAC Act, is null and void, and shall not be implemented;
- B. An Order declaring that the defendants' Proposed Realignment violates 32 U.S.C. § 104, is null and void, and shall not be implemented;
- C. An Order declaring that the defendants' Proposed Realignment violates the Second Amendment to the United States Constitution, is null and void, and shall not be implemented;
- D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and
- E. Further Orders providing such additional legal or equitable relief as this Court may deem just and proper.

DATED this 7th day of September, 2005.

Respectfully submitted,

ROB MCKENNA Attorney General

SARA J. FINLAY, WSBA # 821

Senior Counsel

Attorneys for Plaintiff

Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base, CA; Mountain Home Air Force Base, ID: and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill, establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

Langley Air Force Base, VA

Recommendation: Realign Langley
Air Force Base, VA. Realign base-level
F-15 avionics intermediate maintenance
from Langley Air Force Base to Tyndall
Air Force Base, FL, by establishing a
Centralized Intermediate Repair Facility
(CIRF) at Tyndall Air Force Base, FL, for
F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond international Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F–16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft).

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC–135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

**Air Force Logistics Support Centers** 

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations

Joint Center of Excellence for Religious Training & Education

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE O. GREGOIRE
GOVERNOR



### STATE OF WASHINGTON

## OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld Secretary of Defense 1000 Defense Pentagon Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me – and all those who succeed me as Governor of the state of Washington – from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141<sup>st</sup> Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without any prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do not consent to the realignment of the 141<sup>st</sup> Air Refueling Wing or the removal, relocation, or reassignment of the 141<sup>st</sup>'s unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

The Honorable Donald H. Rumsfeld August 9, 2005 Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,

Christine O. Gragoire

Governor

Crovernor

ce: Anthony J. Principi, Chair, BRAC Commission

The Honorable Maria Cantwell, U.S. Senate

The Honorable Patty Murray, U.S. Senate

The Honorable Brian Baird, U.S. House of Representatives

The Honorable Norm Dicks, U.S. House of Representatives

The Honorable Richard Hastings, U.S. House of Representatives

The Honorable Jay Inslee, U.S. House of Representatives

The Honorable Rick Larsen, U.S. House of Representatives

The Honorable Jim McDermott, U.S. House of Representatives

The Honorable Cathy McMorris, U.S. House of Representatives

The Honorable Dave Reichert, U.S. House of Representatives

The Honorable Adam Smith, U.S. House of Representatives

The Honorable Mike Huckabee, Chair, National Governors Association

Doug Clapp, Office of the Governor

# **UNITED STATES DISTRICT COURT**

Western District of Washington

CHRISTINE O. GREGOIRE, Governor of the State of Washington,		
Plaintiff, $f V.$	SUMMONS IN A	CIVIL CASE
DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as me of the Defense Base Closure and Realignment Commis	embers	<b>558</b> 3 <sup>y</sup>
Defendant TO: (Name and address of Defendant)	ts.	
Phillip E. Coyle 2005 Defense Base Closure and Realignment C 2521 S. Clark St., Suite 600 Arlington, VA 22202	Commission	
YOU ARE HEREBY SUMMONED and rec	quired to serve on PLAINTIFF'S ATTORN	NEY (name and address)
Sara J. Finlay, Senior Counsel Office of the Attorney General Government Operations Division PO Box 40108 Olympia, WA 98504-0108		
an answer to the complaint which is served on you of this summons on you, exclusive of the day of servi for the relief demanded in the complaint. Any answ Clerk of this Court within a reasonable period of times.	ice. If you fail to do so, judgment by defau wer that you serve on the parties to this ac	
BRUCE RIFKIN		
		SEP -7 800
CLERK	DATE	
(By) DEPUTY CLERK		

# **CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

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1. (a) PLAINTIFF	r's		DEFENDANT	rs	
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(b) County of Resider	nce of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIF	Thurston F CASES)	County of Residen	ODGE (INV.S. PLANTIFF CASE	<b>Q</b> <sub>10</sub> <b>3</b>
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(c) Attorney's (Firm Na	me, Address, and Telephone Nu	(mber)	A SEP 0 75 2005 W		
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	(Indicate Citize	nship of Parties in Item III)	Otto o o ti	G	9 ( 9 (
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	Defendants' Air	National Guard bas	e closure actions violat	te U.S. Statutes and U	J.S. Constitution
/II. REQUESTED IN		IS A CLASS ACTION	DEMAND \$		if demanded in complaint:
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## **DEFENDANTS**

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense; PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and BILBRAY, JAMES H.
COYLE, PHILLIP E.
GEHMAN, JR., HAROLD W.
HANSEN, JAMES V.
HILL, JAMES T.
NEWTON, LLOYD W.
SKINNER, SAMUAL K. and TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and Realignment Commission,



## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CHRISTINE O. GREGOIRE, Governor of the State of Washington,

Plaintiff,

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DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as members of the Defense Base Closure and Realignment Commission,

Defendants.

№C05 558\$

COMPLAINT

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

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capacities as members of the Defense Base Closure and Realignment Commission, as follows:

### I. NATURE OF THE CASE

- This case arises out of defendants' attempts, unilaterally and without seeking or 1. obtaining approval from the Governor of the State of Washington, to fundamentally change units of the Washington Air National Guard under the guise of a recommendation made pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign Fairchild Air Force Base" contains the following four elements, which will hereafter be collectively referred to as the "Proposed Realignment":
  - the 141st Air Refueling Wing of the Washington Air National Guard will (a) "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane, Washington ("Fairchild");
  - all eight of the KC-135R aircraft assigned to Washington Air National Guard's 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard Refueling Wing:
  - the 256th Combat Communications Squadron of the Washington Air National (c) Guard currently located at the Four Lakes Communications Station outside Cheney, Washington will be "relocated" to Fairchild; and
  - the 242<sup>nd</sup> Combat Communications Squadron of the Washington Air National (d) Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to Fairchild.
- Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff 2. asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment: (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of federal laws independent of the BRAC Act that expressly grant rights to the State of

Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and (c) infringes on the right of the State to maintain an organized militia in violation of the Second Amendment to the United States Constitution.

### II. JURISDICTION AND VENUE

- 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.
- 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391 because the official residence of the Governor of the State of Washington is in the Western District of Washington.

#### III. **PARTIES**

- 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and brings this action in her official capacity and on behalf of the State. Pursuant to the Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020), Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are actively in the service of the United States.
- 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense of the United States and, pursuant to the BRAC Act is authorized to make recommendations for the closure and realignment of military installations in the United States to the Defense Base Closure and Realignment Commission, and to implement those recommendations ultimately approved. He is sued in his official capacity only.
- 7. Defendant Anthony J. Principi has been named by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC Commission"). He is sued in his official capacity only.

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8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner have been named by the President of the United States to be members of the BRAC Commission. They are sued in their official capacities only.

### IV. THE BRAC ACT

- 9. The stated purpose of the BRAC Act is to "provide a fair process that will result in the timely closure and realignment of military installations inside the United States." BRAC Act § 2901(b).
  - 10. As used in the BRAC Act, the term "military installation" is defined as:

a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

BRAC Act § 2910(4).

11. As used in the BRAC Act, the term "realignment" includes:

any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

BRAC Act § 2910(5).

12. Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the Department of Defense was required to publish in the Federal Register and transmit to the congressional defense committees and the BRAC Commission a "list of the military installations inside the United States that the Secretary recommends for closure or realignment" consistent with the BRAC Act, the force-structure plan and military value and Defendant Rumsfeld submitted his BRAC other criteria established thereunder. recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in the May 16, 2005 Federal Register.

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- 13. Defendant Rumsfeld's BRAC recommendations included the Proposed Realignment an issue in this case.
- 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is empowered to consider the recommendations of the Secretary of Defense and make recommendations to the President of the United States for the closure and realignment of military installations consistent with the BRAC Act.
- 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27, 2005 to consider and make the base closure and realignment recommendations it would forward to the President by September 8, 2005.
- 16. On August 26, 2005, the BRAC Commission voted to adopt defendant Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its recommendations for military installation closure and realignment to the President by September 8, 2005, including the Proposed Realignment.
- 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.
- 18. If the President disapproves any of the BRAC Commission's recommendations, the BRAC Commission has until October 20, 2005 in which to transmit revised recommendations to the President. BRAC Act §§ 2903, 2914.
- 19. If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. BRAC Act §§ 2903, 2914.
- If the President approves either the original or revised recommendations, he 20. must send the approved list and his certification to Congress. If the President approves a revised list, his approval and certification to Congress must occur by November 7, 2005. BRAC Act § 2903, 2914.
- 21. If Congress does not enact a resolution disapproving the approved recommendations within 45 legislative days after receiving them from the President, defendant

Rumsfeld must close and realign all military installations as recommended. BRAC Act § 2904(a).

## V. NATURE OF THE NATIONAL GUARD

- 22. The National Guard has a dual nature, comprising both units of state militias and a part of the federal armed forces when those units are called into federal service. The National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the United States Constitution. The Washington National Guard constitutes a portion of the reserve component of the armed forces.
- 23. States have the right to control the National Guard when not in federal service. Members of the National Guard serve in the state militia under the command of the Governor unless they are called into federal service.
- 24. The National Guard is the only military force shared by the states and the federal government, and ready to carry out missions for both state and federal purposes.
- 25. The balance struck by Congress between the federal and state nature of the National Guard is reflected in the various statutes requiring the consent of the Governor for decisions which change the personnel and forces available for state duties and the way in which such consent is obtained.
- 26. Currently and during the BRAC process, the Washington Air National Guard's 141<sup>st</sup>, 256<sup>th</sup> and 242<sup>d</sup> units have not been federally mobilized into Title 10 federal status.

## VI. THE PROPOSED REALIGNMENT

27. Included in defendant Rumsfeld's base closure or realignment list was the following recommendation regarding Fairchild Air Force Base and referred to herein as the Proposed Realignment:

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141<sup>st</sup> Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

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Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185<sup>th</sup> Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, Iowa. The 256<sup>th</sup> Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

70 FR 28046, May 16, 2005. See Exhibit A.

- 28. The BRAC Commission voted to approve the basic elements of the Proposed Realignment and include the recommendation in its report to the President for the 2005 closure or realignment of military installations pursuant to the BRAC Act.
- 29. It is expected that the BRAC Commission's report to the President due by September 8, 2005 will include a recommendation on the Proposed Realignment substantially similar to the language contained in defendant Rumsfeld's list as published in the Federal Register.
- 30. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to the Proposed Realignment.
- 31. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to make a change in the location, branch, organization or allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications Squadron, the 242<sup>d</sup> Combat Communications Squadron, or any unit of the Washington Air National Guard.
- 32. If the Governor had been requested during the BRAC process to consent to the Proposed Realignment, Governor Gregoire would not have done so.
- 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire expressed her "strong objections to the Department of Defense's recommendations to the [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling Wing" and stated she "emphatically [did] not consent to the realignment of the 141st Air

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Refueling Wing or the removal, relocation, or reassignment of the 141st, unit equipped primary assigned KC-135 aircraft." See Exhibit B.

- 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for such actions." See Exhibit B.
- 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his "proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution." See Exhibit B.
- 36. In recommending the Proposed Realignment, the BRAC Commission contravened the legal advice provided by its own legal counsel in a memorandum dated July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch, organization or allotment, or relocation or withdrawal of a National Guard unit without the consent of the Governor where the unit was located.

# Associating the 141st Air Refueling Wing

- 37. The first portion of the Proposed Realignment would "associate" Washington Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing at Fairchild.
- 38. In his Federal Register notice, Defendant Rumsfield does not define or explain what is meant by his recommendation that the Washington Air National Guard's 141st Air Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also does not define the term "associate".
- The 141st Air Refueling Wing is a Washington Air National Guard unit located 39. entirely within the State of Washington, at Fairchild.
- The 141st Air Refueling Wing is a self-sustaining unit used for both federal and 40. state missions. Members of the 141st have engaged in international, national, regional, state

COMPLAINT

and local missions, including homeland security and emergency response activities. The 141st has been ordered into state active duty status by prior governors of the State to respond to the eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local law enforcement.

If the 141<sup>st</sup> Air Refueling Wing were to "associate" with the Air Force's 92d Air 41. Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither the Governor nor the Adjutant General of the Washington Military Department would maintain operational control over the day to day operations of the 141<sup>st</sup>.

# Distributing the 141<sup>st</sup>'s KC-135s

- 42. The second portion of the Proposed Realignment recommends that all eight of the 141st Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air National Guard Refueling Wing.
- 43. This recommendation would leave the Washington Air National Guard without any primary authorized fixed wing aircraft.
- 44. Without its eight KC-135R aircraft, the Washington Air National Guard's ability to control required aircraft training missions is eliminated, its ability to maintain air crew readiness is restricted, and its ability to recruit and retain officers and enlisted members within the Washington Air National Guard is substantially reduced.
- The Proposed Realignment of the 141st would strip the Governor of all direct 45. emergency access to the 141st's KC-135R aircraft for tactical airlift missions in response to local, state, regional and national emergencies. In addition to refueling capabilities, the KC-135s can be used to meet transport and cargo needs. The 141st Air Refueling Wing and its KC-135 aircraft have been integral components of the State's planned response to wildfires, floods and other natural disasters in the State.

•	46.	The	Proposed	Realignment	of the	141 <sup>st</sup>	would	prevent	the	Governor	from
carrying	g out tl	ie coi	nstitutional	and statutory	respon	sibiliti	es of he	er office	to pr	ovide for p	oublic
safety a	nd the	secur	ity of the h	omeland							

47. In order to provide needed help responding to the devastating effects of Hurricane Katrina, the Governor has approved use of the KC-135 aircraft and members of the 141st Air Refueling Wing. The Governor's September 2, 2005 activation of the Washington Air National Guard specifically authorizes use of the KC-135 aircraft. To date, the 141st and its KC-135s have moved over 500 National Guard members, 50 tons of cargo and engaged in 35 flying sorties to New Orleans and Gulfport in response to Hurricane Katrina, and these numbers will increase. The Proposed Realignment would prevent the Governor from extending this type of assistance to states under the National Response Plan and the national Emergency Management Assistance Compact.

# Relocating the 256<sup>th</sup>

- 48. The third portion of the Proposed Realignment recommends that Washington Air National Guard's 256th Combat Communications Squadron, currently wholly located at the Four Lakes Communication Station outside Cheney, Washington, be "relocated" to Fairchild.
- 49. Four Lakes Communications Station is a federally owned facility under license to the State of Washington.
- Relocating the 256<sup>th</sup> to Fairchild without the Governor's consent would impair 50. the Governor's rights and obligations as Commander-in-Chief of the state militia.

# Relocating the 242<sup>d</sup>

- 51. The fourth portion of the Proposed Realignment recommends that Washington Air National Guard's 242<sup>nd</sup> Combat Communications Squadron, currently wholly located at Geiger Field in Spokane, Washington, be "relocated" to Fairchild.
- 52. Geiger Field is not a federally owned facility, it is owned by the State of Washington.

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Relocating the 242<sup>d</sup> from state-owned land to Fairchild without the Governor's 53. consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia, and impair her ability to interact with and access one of her state National Guard units.

### VII. FIRST CAUSE OF ACTION

## **Exceeds BRAC Act Authority**

- 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53, inclusive, as though fully set forth herein.
- Defendants exceeded their BRAC statutory authority by inappropriately 55. attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or location of the 141st, 256th and 242d units, and the removal and transfer of the Washington Air National Guard's KC-135 aircraft.
- 56. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped or organized.
- 57. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the organization of the Washington Air National Guard.
- Defendants' recommendations to "associate" the 141st unit and "distribute" the 58. KC-135s assigned to it are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- Defendants' recommendations to relocate the 256th unit and the 242d unit are 59. not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- 60. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants do not have the authority under the BRAC Act

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to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants'
authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed
Realignment: and further declaring that the Proposed Realignment is null and void.

61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

## VIII. SECOND CAUSE OF ACTION

## <u>Violates 32 U.S.C. § 104</u>

- 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61, inclusive, as though fully set forth herein.
- 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the units and headquarters of its National Guard".
- 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor".
- 65. The State has fixed the locations of the 141<sup>st</sup>, 256<sup>th</sup> and 242<sup>d</sup> units, which are units located entirely with the State.
- 66. Defendants' Proposed Realignment would change the location, branch, organization and/or allotment of the 141<sup>st</sup>, 256<sup>th</sup> and the 242<sup>d</sup>, and the Governor has not granted her approval for such actions.
- 67. Defendants' Proposed Realignment, without gubernatorial consent, violates 32 U.S.C. § 104.
- 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment, without first obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

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may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.

69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

### IX. THIRD CAUSE OF ACTION

## Violates the Second Amendment

- 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69, inclusive, as though fully set forth herein.
- 71. Under the Constitution of the United States, authority over the military is divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second Amendment states: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II. The guarantee of the Second Amendment regarding states' rights to a well-regulated militia was made for the purpose of assuring the continuation and effectiveness of state militia.
- Proposed Realignment would infringe upon the State's 72. Defendants' constitutional right to maintain a well regulated militia, and violates the Second Amendment.
- 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional; that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.
- 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

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#### X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against defendants and that the Court grant the following relief:

- A. An Order declaring that defendants' Proposed Realignment exceeds their statutory authority under the BRAC Act, is null and void, and shall not be implemented;
- B. An Order declaring that the defendants' Proposed Realignment violates 32 U.S.C. § 104, is null and void, and shall not be implemented;
- C. An Order declaring that the defendants' Proposed Realignment violates the Second Amendment to the United States Constitution, is null and void, and shall not be implemented;
- D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and
- E. Further Orders providing such additional legal or equitable relief as this Court may deem just and proper.

DATED this 7th day of September, 2005.

Respectfully submitted,

**ROB MCKENNA** Attorney General

Senior Counsel

Attorneys for Plaintiff

Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

### Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base, CA: Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill. establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

### Langley Air Force Base, VA

Recommendation: Realign Langley
Air Force Base, VA. Realign base-level
F-15 avionics intermediate maintenance
from Langley Air Force Base to Tyndall
Air Force Base, FL, by establishing a
Centralized Intermediate Repair Facility
(CIRF) at Tyndall Air Force Base, FL, for
F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond International Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F–16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft).

### Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

### General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

**Air Force Logistics Support Centers** 

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations

Joint Center of Excellence for Religious Training & Education

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE Q. GREGOIRE
Governor



### STATE OF WASHINGTON

### OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98304-0002 • (360) 753-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld Secretary of Defense 1000 Defense Pentagon Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me – and all those who succeed me as Governor of the state of Washington – from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141<sup>st</sup> Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without any prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do not consent to the realignment of the 141<sup>st</sup> Air Refueling Wing or the removal, relocation, or reassignment of the 141<sup>st</sup>'s unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

The Honorable Donald H. Rumsfeld August 9, 2005 Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,

Christine O. Gregoire

Governor

cc:

Anthony J. Principi, Chair, BRAC Commission

The Honorable Maria Cantwell, U.S. Senate

The Honorable Patty Murray, U.S. Senate

The Honorable Brian Baird, U.S. House of Representatives

The Honorable Norm Dicks, U.S. House of Representatives

The Honorable Richard Hastings, U.S. House of Representatives

The Honorable Jay Inslee, U.S. House of Representatives

The Honorable Rick Larsen, U.S. House of Representatives

The Honorable Jim McDermott, U.S. House of Representatives

The Honorable Cathy McMorris, U.S. House of Representatives

The Honorable Dave Reichert, U.S. House of Representatives

The Honorable Adam Smith, U.S. House of Representatives

The Honorable Mike Huckabee, Chair, National Governors Association

Doug Clapp, Office of the Governor

# UNITED STATES DISTRICT COURT

Western	District of	Washington	
CHRISTINE O. GREGOIRE, Governor of the State of Washington,	District of	Washington	
Plaintiff,		SUMMONS IN A	CIVII. CASE
v.		BUMMOND IN A	CIVIL CASE
DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as me of the Defense Base Closure and Realignment Commission.	embers	CO5	<b>558</b> 3?
Defendan TO: (Name and address of Defendant)	ts.		
Harold W. Gehman, Jr. 2005 Defense Base Closure and Realignment C 2521 S. Clark St., Suite 600 Arlington, VA 22202	Commission		
YOU ARE HEREBY SUMMONED and re-	quired to serve	on PLAINTIFF'S ATTORN	EY (name and address)
Sara J. Finlay, Senior Counsel Office of the Attorney General Government Operations Division PO Box 40108 Olympia, WA 98504-0108			
an answer to the complaint which is served on your of this summons on you, exclusive of the day of servitor the relief demanded in the complaint. Any answer Clerk of this Court within a reasonable period of tire	ice. If you fail wer that you se	to do so, judgment by defau erve on the parties to this act	_
BRUCE RIFKIN		SEP -7	

DATE

(By) DEPUTY CLERK

CLERK

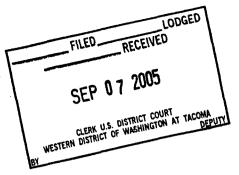
# **CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

Claiman or Subject of a	I. (a) PLAINTIFF	S		DEFENDANT	rs -	
(b) County of Residence of Fiest Listed Plaintiff Thurston (COUNTY of Plain Name, Address, and Telephone Number) Office of the Attorney General, Ped Box 40108, Olympu, WA 98504-0108, (369) 356-2436, Sara J. Finity, Sr. County Office of the Attorney General, Ped Box 40108, Olympu, WA 98504-0108, (369) 356-2436, Sara J. Finity, Sr. County III. BASIS OF JURISDICTION (*Ince m.X' in One Box Only) Office of the Attorney General, Ped Box 40108, Olympu, WA Ped J. School Comment Patient    13 Federal Question   3 Federal Question   3 Federal Question   4 Diversity   (Include Citizensis Intelligence of Principal Place   5 U.S. Governament   10 Diversity State of Principal Place   5 U.S. Governament   10 Diversity State of Principal Place   10 Diversity State of Principal Place   10 Diversity State of Principal Plane   10 Diversity State of Principal Place   10 Diversity State of Principal Plane   10 Diversity State of Prin			n	See Attached I	List	
(c) Attorney's (Firm Nana, Address, and Telephone Number)  Office of the Attorney General, PO Box 40108, Olympha, WA  SSO4-0108, (360) 586-2436, Sars J. Finlay, Sr. Courses  II. BASIS OF JURISDICTION (Place on "X" in One Box 6010)  Office of the Attorney General, PO Box 40108, Olympha, WA  Figure 1		ace of First Listed Plaintiff	Thurston		ODGE INUS. PLANTIFICASE	
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## **DEFENDANTS**

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense; PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and BILBRAY, JAMES H. COYLE, PHILLIP E. GEHMAN, JR., HAROLD W. HANSEN, JAMES V. HILL, JAMES T. NEWTON, LLOYD W. SKINNER, SAMUAL K. and TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and Realignment Commission,



# UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CHRISTINE O. GREGOIRE, Governor of the State of Washington,

Plaintiff,

v.

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DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as members of the Defense Base Closure and Realignment Commission,

Defendants.

NC05 558\$

COMPLAINT

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

capacities as members of the Defense Base Closure and Realignment Commission, as follows:

## I. NATURE OF THE CASE

- 1. This case arises out of defendants' attempts, unilaterally and without seeking or obtaining approval from the Governor of the State of Washington, to fundamentally change units of the Washington Air National Guard under the guise of a recommendation made pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign Fairchild Air Force Base" contains the following four elements, which will hereafter be collectively referred to as the "Proposed Realignment":
  - (a) the 141<sup>st</sup> Air Refueling Wing of the Washington Air National Guard will "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane, Washington ("Fairchild");
  - (b) all eight of the KC-135R aircraft assigned to Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing will be "distributed" to an Iowa Air National Guard Refueling Wing;
  - (c) the 256<sup>th</sup> Combat Communications Squadron of the Washington Air National Guard currently located at the Four Lakes Communications Station outside Cheney, Washington will be "relocated" to Fairchild; and
  - (d) the 242<sup>nd</sup> Combat Communications Squadron of the Washington Air National Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to Fairchild.
- 2. Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment:

  (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of federal laws independent of the BRAC Act that expressly grant rights to the State of

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Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and (c) infringes on the right of the State to maintain an organized militia in violation of the Second Amendment to the United States Constitution.

### JURISDICTION AND VENUE II.

- 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.
- 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391 because the official residence of the Governor of the State of Washington is in the Western District of Washington.

### III. **PARTIES**

- 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and brings this action in her official capacity and on behalf of the State. Pursuant to the Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020), Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are actively in the service of the United States.
- 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense of the United States and, pursuant to the BRAC Act is authorized to make recommendations for the closure and realignment of military installations in the United States to the Defense Base Closure and Realignment Commission, and to implement those recommendations ultimately approved. He is sued in his official capacity only.
- 7. Defendant Anthony J. Principi has been named by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC" Commission"). He is sued in his official capacity only.

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8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner have been named by the President of the United States to be members of the BRAC Commission. They are sued in their official capacities only.

#### IV. THE BRAC ACT

- 9. The stated purpose of the BRAC Act is to "provide a fair process that will result in the timely closure and realignment of military installations inside the United States." BRAC Act § 2901(b).
  - 10. As used in the BRAC Act, the term "military installation" is defined as:

a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

BRAC Act § 2910(4).

11. As used in the BRAC Act, the term "realignment" includes:

any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

BRAC Act § 2910(5).

12. Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the Department of Defense was required to publish in the Federal Register and transmit to the congressional defense committees and the BRAC Commission a "list of the military installations inside the United States that the Secretary recommends for closure or realignment" consistent with the BRAC Act, the force-structure plan and military value and other criteria established thereunder. Defendant Rumsfeld submitted his BRAC recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in the May 16, 2005 Federal Register.

- 13. Defendant Rumsfeld's BRAC recommendations included the Proposed Realignment an issue in this case.
- 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is empowered to consider the recommendations of the Secretary of Defense and make recommendations to the President of the United States for the closure and realignment of military installations consistent with the BRAC Act.
- 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27, 2005 to consider and make the base closure and realignment recommendations it would forward to the President by September 8, 2005.
- 16. On August 26, 2005, the BRAC Commission voted to adopt defendant Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its recommendations for military installation closure and realignment to the President by September 8, 2005, including the Proposed Realignment.
- 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.
- 18. If the President disapproves any of the BRAC Commission's recommendations, the BRAC Commission has until October 20, 2005 in which to transmit revised recommendations to the President. BRAC Act §§ 2903, 2914.
- 19. If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. BRAC Act §§ 2903, 2914.
- 20. If the President approves either the original or revised recommendations, he must send the approved list and his certification to Congress. If the President approves a revised list, his approval and certification to Congress must occur by November 7, 2005. BRAC Act § 2903, 2914.
- 21. If Congress does not enact a resolution disapproving the approved recommendations within 45 legislative days after receiving them from the President, defendant

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BRAC. Rumsfeld must close and realign all military installations as recommended. Act § 2904(a).

#### V. NATURE OF THE NATIONAL GUARD

- 22. The National Guard has a dual nature, comprising both units of state militias and a part of the federal armed forces when those units are called into federal service. The National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the United States Constitution. The Washington National Guard constitutes a portion of the reserve component of the armed forces.
- 23. States have the right to control the National Guard when not in federal service. Members of the National Guard serve in the state militia under the command of the Governor unless they are called into federal service.
- 24. The National Guard is the only military force shared by the states and the federal government, and ready to carry out missions for both state and federal purposes.
- 25. The balance struck by Congress between the federal and state nature of the National Guard is reflected in the various statutes requiring the consent of the Governor for decisions which change the personnel and forces available for state duties and the way in which such consent is obtained.
- 26. Currently and during the BRAC process, the Washington Air National Guard's 141st, 256th and 242d units have not been federally mobilized into Title 10 federal status.

#### VI. THE PROPOSED REALIGNMENT

27. Included in defendant Rumsfeld's base closure or realignment list was the following recommendation regarding Fairchild Air Force Base and referred to herein as the Proposed Realignment:

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

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Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185<sup>th</sup> Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, Iowa. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

70 FR 28046, May 16, 2005. See Exhibit A.

- 28. The BRAC Commission voted to approve the basic elements of the Proposed Realignment and include the recommendation in its report to the President for the 2005 closure or realignment of military installations pursuant to the BRAC Act.
- 29. It is expected that the BRAC Commission's report to the President due by September 8, 2005 will include a recommendation on the Proposed Realignment substantially similar to the language contained in defendant Rumsfeld's list as published in the Federal Register.
- 30. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to the Proposed Realignment.
- 31. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to make a change in the location, branch, organization or allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications Squadron, the 242<sup>d</sup> Combat Communications Squadron, or any unit of the Washington Air National Guard.
- 32. If the Governor had been requested during the BRAC process to consent to the Proposed Realignment, Governor Gregoire would not have done so.
- 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire expressed her "strong objections to the Department of Defense's recommendations to the [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling Wing" and stated she "emphatically [did] not consent to the realignment of the 141st Air

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Refueling Wing or the removal, relocation, or reassignment of the 141st, s unit equipped primary assigned KC-135 aircraft." See Exhibit B.

- 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for such actions." See Exhibit B.
- 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his "proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution." See Exhibit B.
- 36. In recommending the Proposed Realignment, the BRAC Commission contravened the legal advice provided by its own legal counsel in a memorandum dated July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch, organization or allotment, or relocation or withdrawal of a National Guard unit without the consent of the Governor where the unit was located.

# Associating the 141st Air Refueling Wing

- 37. The first portion of the Proposed Realignment would "associate" Washington Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing at Fairchild.
- 38. In his Federal Register notice, Defendant Rumsfield does not define or explain what is meant by his recommendation that the Washington Air National Guard's 141st Air Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also does not define the term "associate".
- The 141st Air Refueling Wing is a Washington Air National Guard unit located 39. entirely within the State of Washington, at Fairchild.
- 40. The 141<sup>st</sup> Air Refueling Wing is a self-sustaining unit used for both federal and state missions. Members of the 141st have engaged in international, national, regional, state

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and local missions, including homeland security and emergency response activities. The 141st has been ordered into state active duty status by prior governors of the State to respond to the eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local law enforcement.

If the 141<sup>st</sup> Air Refueling Wing were to "associate" with the Air Force's 92d Air 41. Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither the Governor nor the Adjutant General of the Washington Military Department would maintain operational control over the day to day operations of the 141st.

# Distributing the 141<sup>st</sup>'s KC-135s

- 42. The second portion of the Proposed Realignment recommends that all eight of the 141st Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air National Guard Refueling Wing.
- 43. This recommendation would leave the Washington Air National Guard without any primary authorized fixed wing aircraft.
- 44. Without its eight KC-135R aircraft, the Washington Air National Guard's ability to control required aircraft training missions is eliminated, its ability to maintain air crew readiness is restricted, and its ability to recruit and retain officers and enlisted members within the Washington Air National Guard is substantially reduced.
- The Proposed Realignment of the 141st would strip the Governor of all direct 45. emergency access to the 141st's KC-135R aircraft for tactical airlift missions in response to local, state, regional and national emergencies. In addition to refueling capabilities, the KC-135s can be used to meet transport and cargo needs. The 141st Air Refueling Wing and its KC-135 aircraft have been integral components of the State's planned response to wildfires, floods and other natural disasters in the State.

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- The Proposed Realignment of the 141st would prevent the Governor from 46. carrying out the constitutional and statutory responsibilities of her office to provide for public safety and the security of the homeland.
- 47. In order to provide needed help responding to the devastating effects of Hurricane Katrina, the Governor has approved use of the KC-135 aircraft and members of the 141st Air Refueling Wing. The Governor's September 2, 2005 activation of the Washington Air National Guard specifically authorizes use of the KC-135 aircraft. To date, the 141st and its KC-135s have moved over 500 National Guard members, 50 tons of cargo and engaged in 35 flying sorties to New Orleans and Gulfport in response to Hurricane Katrina, and these The Proposed Realignment would prevent the Governor from numbers will increase. extending this type of assistance to states under the National Response Plan and the national Emergency Management Assistance Compact.

# Relocating the 256<sup>th</sup>

- 48. The third portion of the Proposed Realignment recommends that Washington Air National Guard's 256th Combat Communications Squadron, currently wholly located at the Four Lakes Communication Station outside Cheney, Washington, be "relocated" to Fairchild.
- 49. Four Lakes Communications Station is a federally owned facility under license to the State of Washington.
- Relocating the 256<sup>th</sup> to Fairchild without the Governor's consent would impair 50. the Governor's rights and obligations as Commander-in-Chief of the state militia.

# Relocating the 242d

- 51. The fourth portion of the Proposed Realignment recommends that Washington Air National Guard's 242<sup>nd</sup> Combat Communications Squadron, currently wholly located at Geiger Field in Spokane, Washington, be "relocated" to Fairchild.
- 52. Geiger Field is not a federally owned facility, it is owned by the State of Washington.

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Relocating the 242<sup>d</sup> from state-owned land to Fairchild without the Governor's 53. consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia, and impair her ability to interact with and access one of her state National Guard units.

#### VII. FIRST CAUSE OF ACTION

# Exceeds BRAC Act Authority

- 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53, inclusive, as though fully set forth herein.
- 55. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or location of the 141st, 256th and 242d units, and the removal and transfer of the Washington Air National Guard's KC-135 aircraft.
- 56. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped or organized.
- 57. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the organization of the Washington Air National Guard.
- Defendants' recommendations to "associate" the 141st unit and "distribute" the 58. KC-135s assigned to it are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- Defendants' recommendations to relocate the 256<sup>th</sup> unit and the 242<sup>d</sup> unit are *5*9. not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a 60. Declaratory Judgment declaring that defendants do not have the authority under the BRAC Act

to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants'
authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed
Realignment; and further declaring that the Proposed Realignment is null and void.

61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

# VIII. SECOND CAUSE OF ACTION

# **Violates 32 U.S.C. § 104**

- 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61, inclusive, as though fully set forth herein.
- 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the units and headquarters of its National Guard".
- 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor".
- 65. The State has fixed the locations of the 141<sup>st</sup>, 256<sup>th</sup> and 242<sup>d</sup> units, which are units located entirely with the State.
- 66. Defendants' Proposed Realignment would change the location, branch, organization and/or allotment of the 141<sup>st</sup>, 256<sup>th</sup> and the 242<sup>d</sup>, and the Governor has not granted her approval for such actions.
- 67. Defendants' Proposed Realignment, without gubernatorial consent, violates 32 U.S.C. § 104.
- 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment, without first obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

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may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.

69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

#### IX. THIRD CAUSE OF ACTION

# Violates the Second Amendment

- 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69, inclusive, as though fully set forth herein.
- 71. Under the Constitution of the United States, authority over the military is divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second Amendment states: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II. The guarantee of the Second Amendment regarding states' rights to a well-regulated militia was made for the purpose of assuring the continuation and effectiveness of state militia.
- 72. Proposed Realignment would infringe upon the State's constitutional right to maintain a well regulated militia, and violates the Second Amendment.
- 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional; that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.
- 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

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### X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against defendants and that the Court grant the following relief:

- A. An Order declaring that defendants' Proposed Realignment exceeds their statutory authority under the BRAC Act, is null and void, and shall not be implemented;
- B. An Order declaring that the defendants' Proposed Realignment violates 32 U.S.C. § 104, is null and void, and shall not be implemented;
- C. An Order declaring that the defendants' Proposed Realignment violates the Second Amendment to the United States Constitution, is null and void, and shall not be implemented;
- D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and
- Further Orders providing such additional legal or equitable relief as this Court may deem just and proper.

DATED this 7th day of September, 2005.

Respectfully submitted,

**ROB MCKENNA** Attorney General

Senior Counsel

Attorneys for Plaintiff

Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

### Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base, CA; Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill, establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

### Langley Air Force Base, VA

Recommendation: Realign Langley
Air Force Base, VA. Realign base-level
F-15 avionics intermediate maintenance
from Langley Air Force Base to Tyndall
Air Force Base, FL, by establishing a
Centralized Intermediate Repair Facility
(CIRF) at Tyndall Air Force Base, FL, for
F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond international Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F–16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft)

### Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

# General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base, Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations

Joint Center of Excellence for Religious Training & Education

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE Q. GREGOIRE
GOVERNOR



### STATE OF WASHINGTON

# OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld Secretary of Defense 1000 Defense Pentagon Washington, DC 20301-1000

Dear Mr. Secretary;

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me – and all those who succeed me as Governor of the state of Washington – from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141<sup>st</sup> Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without *any* prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do not consent to the realignment of the 141<sup>st</sup> Air Refueling Wing or the removal, relocation, or reassignment of the 141<sup>st</sup>'s unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

The Honorable Donald H. Rumsfeld August 9, 2005 Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,

Christine O. Gregoire

Governor

cc: Anthony J. Principi, Chair, BRAC Commission

The Honorable Maria Cantwell, U.S. Senate

The Honorable Patty Murray, U.S. Senate

The Honorable Brian Baird, U.S. House of Representatives

The Honorable Norm Dicks, U.S. House of Representatives

The Honorable Richard Hastings, U.S. House of Representatives

The Honorable Jay Inslee, U.S. House of Representatives

The Honorable Rick Larsen, U.S. House of Representatives

The Honorable Jim McDermott, U.S. House of Representatives

The Honorable Cathy McMorris, U.S. House of Representatives

The Honorable Dave Reichert, U.S. House of Representatives

The Honorable Adam Smith, U.S. House of Representatives

The Honorable Mike Huckabee, Chair, National Governors Association

Doug Clapp, Office of the Governor

# UNITED STATES DISTRICT COURT

Western	District of	Washington	
CHRISTINE O. GREGOIRE, Governor of the State of Washington,			
Plaintiff,		SUMMONS IN A C	IVIL CASE
V.			
DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as me of the Defense Base Closure and Realignment Commis	embers	E NUMBER: C 05	<b>558</b> 5
Defendant TO: (Name and address of Defendant)	ts.		
James V. Hansen 2005 Defense Base Closure and Realignment C 2521 S. Clark St., Suite 600 Arlington, VA 22202	Commission		
YOU ARE HEREBY SUMMONED and reconstructions of the Attorney General Government Operations Division PO Box 40108 Olympia, WA 98504-0108	quired to serve	on PLAINTIFF'S ATTORNE	Y (name and address)
an answer to the complaint which is served on you vof this summons on you, exclusive of the day of servi for the relief demanded in the complaint. Any answ Clerk of this Court within a reasonable period of tin	ice. If you fail ver that you se	to do so, judgment by default rve on the parties to this action	
BRUCE RIFKIN		SEP -	7
CLERK South Oceanner	DATE		
(Rv) DEPLITY CLERK			

# **CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating e civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

i. (a) PLAINTIFF	S	DEFENDA	NTS	
Gregoire, Chr Governor of t	ristine O. he State of Washington	See Attache	ed List	
(b) County of Resider	nce of First Listed Plaintiff Thurston (EXCEPT IN U.S. PLAINTIFF CASES)		idence of First Listed Defendant LODGE (INU.S. PLENTIFICASE	
(c) Attorney's (Firm Na	me, Address, and Telephone Number)	FILED MODELLE	D NITEONIEMNATIO CLEE AN INVO VED.	USE THE DOCATION OF THE
Office of the At	torney General, PO Box 40108, Oly 50) 586-2436, Sara J. Finlay, Sr. Co	puncel PL'	. \	
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### **DEFENDANTS**

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense;
PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and
BILBRAY, JAMES H.
COYLE, PHILLIP E.
GEHMAN, JR., HAROLD W.
HANSEN, JAMES V.
HILL, JAMES T.
NEWTON, LLOYD W.
SKINNER, SAMUAL K. and
TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and Realignment Commission,



# UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CHRISTINE O. GREGOIRE, Governor of the State of Washington.

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v.

Plaintiff,

DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as members of the Defense Base Closure and Realignment Commission.

Defendants.

™C05 558\$

COMPLAINT

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

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capacities as members of the Defense Base Closure and Realignment Commission, as follows:

### I. NATURE OF THE CASE

- 1. This case arises out of defendants' attempts, unilaterally and without seeking or obtaining approval from the Governor of the State of Washington, to fundamentally change units of the Washington Air National Guard under the guise of a recommendation made pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign Fairchild Air Force Base" contains the following four elements, which will hereafter be collectively referred to as the "Proposed Realignment":
  - the 141st Air Refueling Wing of the Washington Air National Guard will (a) "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane, Washington ("Fairchild");
  - **(b)** all eight of the KC-135R aircraft assigned to Washington Air National Guard's 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard Refueling Wing;
  - the 256th Combat Communications Squadron of the Washington Air National (c) Guard currently located at the Four Lakes Communications Station outside Cheney, Washington will be "relocated" to Fairchild; and
  - the 242<sup>nd</sup> Combat Communications Squadron of the Washington Air National (d) Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to Fairchild.
- 2. Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment: (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of federal laws independent of the BRAC Act that expressly grant rights to the State of

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Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and (c) infringes on the right of the State to maintain an organized militia in violation of the Second Amendment to the United States Constitution.

### II. JURISDICTION AND VENUE

- 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.
- 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391 because the official residence of the Governor of the State of Washington is in the Western District of Washington.

#### III. **PARTIES**

- 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and brings this action in her official capacity and on behalf of the State. Pursuant to the Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020), Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are actively in the service of the United States.
- 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense of the United States and, pursuant to the BRAC Act is authorized to make recommendations for the closure and realignment of military installations in the United States to the Defense Base Closure and Realignment Commission, and to implement those recommendations ultimately approved. He is sued in his official capacity only.
- 7. Defendant Anthony J. Principi has been named by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC Commission"). He is sued in his official capacity only.

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	1 8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr.,					
	2 James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and					
	Sue Ellen Turner have been named by the President of the United States to be members of the					
	4 BRAC Commission. They are sued in their official capacities only.					
	5 IV. THE BRAC ACT					
	9. The stated purpose of the BRAC Act is to "provide a fair process that will result					
•	7 in the timely closure and realignment of military installations inside the United States." BRAC					
:	Act § 2901(b).					
9	10. As used in the BRAC Act, the term "military installation" is defined as:					
10	g a case, camp, post, station, yard, contoi, nomeport facility for any simp, or outer					
11	leased racinty. Such term does not include any facility used primarily for civil					
12	works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.					
13	BRAC Act § 2910(4).					
14	11. As used in the BRAC Act, the term "realignment" includes:					
15 16	any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.					
17	BRAC Act § 2910(5).					
18	12. Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the					
19	Department of Defense was required to publish in the Federal Register and transmit to the					
20	congressional defense committees and the BRAC Commission a "list of the military					
21	installations inside the United States that the Secretary recommends for closure or					
22	realignment" consistent with the BRAC Act, the force-structure plan and military value and					
23	other criteria established thereunder. Defendant Rumsfeld submitted his BRAC					
24	recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in					
25	the May 16, 2005 Federal Register.					
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- 13. Defendant Rumsfeld's BRAC recommendations included the Proposed Realignment an issue in this case.
- 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is empowered to consider the recommendations of the Secretary of Defense and make recommendations to the President of the United States for the closure and realignment of military installations consistent with the BRAC Act.
- 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27, 2005 to consider and make the base closure and realignment recommendations it would forward to the President by September 8, 2005.
- 16. On August 26, 2005, the BRAC Commission voted to adopt defendant Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its recommendations for military installation closure and realignment to the President by September 8, 2005, including the Proposed Realignment.
- 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.
- 18. If the President disapproves any of the BRAC Commission's recommendations, the BRAC Commission has until October 20, 2005 in which to transmit revised recommendations to the President. BRAC Act §§ 2903, 2914.
- 19. If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. BRAC Act §§ 2903, 2914.
- 20. If the President approves either the original or revised recommendations, he must send the approved list and his certification to Congress. If the President approves a revised list, his approval and certification to Congress must occur by November 7, 2005. BRAC Act § 2903, 2914.
- 21. If Congress does not enact a resolution disapproving the approved recommendations within 45 legislative days after receiving them from the President, defendant

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Rumsfeld must close and realign all military installations as recommended. BRAC Act § 2904(a).

#### V. NATURE OF THE NATIONAL GUARD

- 22. The National Guard has a dual nature, comprising both units of state militias and a part of the federal armed forces when those units are called into federal service. The National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the United States Constitution. The Washington National Guard constitutes a portion of the reserve component of the armed forces.
- 23. States have the right to control the National Guard when not in federal service. Members of the National Guard serve in the state militia under the command of the Governor unless they are called into federal service.
- 24. The National Guard is the only military force shared by the states and the federal government, and ready to carry out missions for both state and federal purposes.
- 25. The balance struck by Congress between the federal and state nature of the National Guard is reflected in the various statutes requiring the consent of the Governor for decisions which change the personnel and forces available for state duties and the way in which such consent is obtained.
- Currently and during the BRAC process, the Washington Air National Guard's 26. 141st, 256th and 242d units have not been federally mobilized into Title 10 federal status.

#### VI. THE PROPOSED REALIGNMENT

27. Included in defendant Rumsfeld's base closure or realignment list was the following recommendation regarding Fairchild Air Force Base and referred to herein as the Proposed Realignment:

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

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Fairchild Air Force Base, and the 141<sup>st</sup> Air Refueling Wing's eight KC-135R aircraft are distributed to the 185<sup>th</sup> Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, Iowa. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

70 FR 28046, May 16, 2005. See Exhibit A.

- 28. The BRAC Commission voted to approve the basic elements of the Proposed Realignment and include the recommendation in its report to the President for the 2005 closure or realignment of military installations pursuant to the BRAC Act.
- 29. It is expected that the BRAC Commission's report to the President due by September 8, 2005 will include a recommendation on the Proposed Realignment substantially similar to the language contained in defendant Rumsfeld's list as published in the Federal Register.
- 30. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to the Proposed Realignment.
- 31. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to make a change in the location, branch, organization or allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications Squadron, the 242<sup>d</sup> Combat Communications Squadron, or any unit of the Washington Air National Guard.
- 32. If the Governor had been requested during the BRAC process to consent to the Proposed Realignment, Governor Gregoire would not have done so.
- 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire expressed her "strong objections to the Department of Defense's recommendations to the [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling Wing" and stated she "emphatically [did] not consent to the realignment of the 141st Air

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Refueling Wing or the removal, relocation, or reassignment of the 141st, s unit equipped primary assigned KC-135 aircraft." See Exhibit B.

- 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for such actions." See Exhibit B.
- 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his "proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution." See Exhibit B.
- 36. In recommending the Proposed Realignment, the BRAC Commission contravened the legal advice provided by its own legal counsel in a memorandum dated July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch, organization or allotment, or relocation or withdrawal of a National Guard unit without the consent of the Governor where the unit was located.

# Associating the 141st Air Refueling Wing

- 37. The first portion of the Proposed Realignment would "associate" Washington Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing at Fairchild.
- 38. In his Federal Register notice, Defendant Rumsfield does not define or explain what is meant by his recommendation that the Washington Air National Guard's 141st Air Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also does not define the term "associate".
- The 141st Air Refueling Wing is a Washington Air National Guard unit located 39. entirely within the State of Washington, at Fairchild.
- The 141st Air Refueling Wing is a self-sustaining unit used for both federal and 40. state missions. Members of the 141<sup>st</sup> have engaged in international, national, regional, state

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and local missions, including homeland security and emergency response activities. The 141st has been ordered into state active duty status by prior governors of the State to respond to the eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local law enforcement.

If the 141st Air Refueling Wing were to "associate" with the Air Force's 92d Air 41. Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither the Governor nor the Adjutant General of the Washington Military Department would maintain operational control over the day to day operations of the 141st.

# Distributing the 141<sup>st</sup>'s KC-135s

- 42. The second portion of the Proposed Realignment recommends that all eight of the 141st Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air National Guard Refueling Wing.
- 43. This recommendation would leave the Washington Air National Guard without any primary authorized fixed wing aircraft.
- 44. Without its eight KC-135R aircraft, the Washington Air National Guard's ability to control required aircraft training missions is eliminated, its ability to maintain air crew readiness is restricted, and its ability to recruit and retain officers and enlisted members within the Washington Air National Guard is substantially reduced.
- The Proposed Realignment of the 141st would strip the Governor of all direct 45. emergency access to the 141st's KC-135R aircraft for tactical airlift missions in response to local, state, regional and national emergencies. In addition to refueling capabilities, the KC-135s can be used to meet transport and cargo needs. The 141st Air Refueling Wing and its KC-135 aircraft have been integral components of the State's planned response to wildfires, floods and other natural disasters in the State.

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- The Proposed Realignment of the 141st would prevent the Governor from 46. carrying out the constitutional and statutory responsibilities of her office to provide for public safety and the security of the homeland.
- 47. In order to provide needed help responding to the devastating effects of Hurricane Katrina, the Governor has approved use of the KC-135 aircraft and members of the 141st Air Refueling Wing. The Governor's September 2, 2005 activation of the Washington Air National Guard specifically authorizes use of the KC-135 aircraft. To date, the 141st and its KC-135s have moved over 500 National Guard members, 50 tons of cargo and engaged in 35 flying sorties to New Orleans and Gulfport in response to Hurricane Katrina, and these numbers will increase. The Proposed Realignment would prevent the Governor from extending this type of assistance to states under the National Response Plan and the national Emergency Management Assistance Compact.

# Relocating the 256th

- 48. The third portion of the Proposed Realignment recommends that Washington Air National Guard's 256th Combat Communications Squadron, currently wholly located at the Four Lakes Communication Station outside Cheney, Washington, be "relocated" to Fairchild.
- 49. Four Lakes Communications Station is a federally owned facility under license to the State of Washington.
- Relocating the 256th to Fairchild without the Governor's consent would impair 50. the Governor's rights and obligations as Commander-in-Chief of the state militia.

# Relocating the 242<sup>d</sup>

- 51. The fourth portion of the Proposed Realignment recommends that Washington Air National Guard's 242<sup>nd</sup> Combat Communications Squadron, currently wholly located at Geiger Field in Spokane, Washington, be "relocated" to Fairchild.
- 52. Geiger Field is not a federally owned facility, it is owned by the State of Washington.

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Relocating the 242<sup>d</sup> from state-owned land to Fairchild without the Governor's 53. consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia, and impair her ability to interact with and access one of her state National Guard units.

### VII. FIRST CAUSE OF ACTION

# **Exceeds BRAC Act Authority**

- 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53, inclusive, as though fully set forth herein.
- 55. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or location of the 141st, 256th and 242d units, and the removal and transfer of the Washington Air National Guard's KC-135 aircraft.
- 56. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped or organized.
- 57. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the organization of the Washington Air National Guard.
- 58. Defendants' recommendations to "associate" the 141<sup>st</sup> unit and "distribute" the KC-135s assigned to it are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- Defendants' recommendations to relocate the 256<sup>th</sup> unit and the 242<sup>d</sup> unit are 59. not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- 60. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants do not have the authority under the BRAC Act

may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.

69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

## IX. THIRD CAUSE OF ACTION

# Violates the Second Amendment

- 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69, inclusive, as though fully set forth herein.
- 71. Under the Constitution of the United States, authority over the military is divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second Amendment states: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II. The guarantee of the Second Amendment regarding states' rights to a well-regulated militia was made for the purpose of assuring the continuation and effectiveness of state militia.
- 72. Defendants' Proposed Realignment would infringe upon the State's constitutional right to maintain a well regulated militia, and violates the Second Amendment.
- 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional; that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.
- 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

	X. PRAYER FOR RELIEF
:	WHEREFORE, Plaintiff prays that judgment be entered in its favor and against
3	defendants and that the Court grant the following relief:
4	A. An Order declaring that defendants' Proposed Realignment exceeds their
5	statutory authority under the BRAC Act, is null and void, and shall not be implemented;
6	B. An Order declaring that the defendants' Proposed Realignment violates
7	32 U.S.C. § 104, is null and void, and shall not be implemented;
8	C. An Order declaring that the defendants' Proposed Realignment violates the
9	Second Amendment to the United States Constitution, is null and void, and shall not be
10	implemented;
11	D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing
12	this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and
13	E. Further Orders providing such additional legal or equitable relief as this Court
14	may deem just and proper.
15	DATED this 7th day of September, 2005.
16	Respectfully submitted,
17	ROB MCKENNA
18	Attorney General
19	Stractive and
20	Sara J. FINLAY, WSBA # 821
21	Senior Counsel Attorneys for Plaintiff
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Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

### Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base. CA; Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill. establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

### Langley Air Force Base, VA

Recommendation: Realign Langley
Air Force Base, VA. Realign base-level
F-15 avionics intermediate maintenance
from Langley Air Force Base to Tyndall
Air Force Base, FL, by establishing a
Centralized Intermediate Repair Facility
(CIRF) at Tyndall Air Force Base, FL, for
F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond International Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F-16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft).

### Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base

### General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

### Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base, Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations

Joint Center of Excellence for Religious Training & Education

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE Q. GREGOIRE
GOVERNOR



### STATE OF WASHINGTON

# OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld Secretary of Defense 1000 Defense Pentagon Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me — and all those who succeed me as Governor of the state of Washington — from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141<sup>st</sup> Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without any prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do not consent to the realignment of the 141<sup>st</sup> Air Refueling Wing or the removal, relocation, or reassignment of the 141<sup>st</sup>'s unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

The Honorable Donald H. Rumsfeld August 9, 2005 Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,

Christine O. Gregoire

Governor

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cc: Anthony J. Principi, Chair, BRAC Commission

The Honorable Maria Cantwell, U.S. Senate

The Honorable Patty Murray, U.S. Senate

The Honorable Brian Baird, U.S. House of Representatives

The Honorable Norm Dicks, U.S. House of Representatives

The Honorable Richard Hastings, U.S. House of Representatives

The Honorable Jay Inslee, U.S. House of Representatives

The Honorable Rick Larsen, U.S. House of Representatives

The Honorable Jim McDermott, U.S. House of Representatives

The Honorable Cathy McMorris, U.S. House of Representatives

The Honorable Dave Reichert, U.S. House of Representatives

The Honorable Adam Smith, U.S. House of Representatives

The Honorable Mike Huckabee, Chair, National Governors Association

Doug Clapp, Office of the Governor

(By) DEPUTY CLERK

# UNITED STATES DISTRICT COURT

CHRISTINE O. GREGOIRE, Governor of the State of Washington,	<u>Western</u> Plaintiff,	District of	Washington	
	Plaintiff,			
V.			SUMMONS IN A C	IVII. CASE
			SOMMOND IN IL	
DONALD H. RUMSFELD, in his official capar Secretary of Defense; ANTHONY J. PRINCIF official capacity as Chairman of the Defense Closure and Realignment Commission; and BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES LLOYD W. NEWTON, SAMUAL K. SKINNEF SUE ELLEN TURNER, in their official capacity of the Defense Base Closure and Realignment.	PI, in his Base JAMES H. T. HILL, R, and ties as me	mbers	E NUMBER: C05	<b>558</b> 3
TO: (Name and address of Defenda	Defendant Int)	<b>S</b> .		
James T. Hill 2005 Defense Base Closure and Realig 2521 S. Clark St., Suite 600 Arlington, VA 22202		ommission		
YOU ARE HEREBY SUMMONE  Sara J. Finlay, Senior Counsel Office of the Attorney General Government Operations Division PO Box 40108	ED and req	uired to serve	on PLAINTIFF'S ATTORNE	${f Y}$ (name and address)
Olympia, WA 98504-0108  an answer to the complaint which is served of this summons on you, exclusive of the dafor the relief demanded in the complaint. Clerk of this Court within a reasonable per	ny of servi Any answ riod of tin	ce. If you fail er that you se	to do so, judgment by default rve on the parties to this action	
CLERK		DATE	CS. 1 ·	

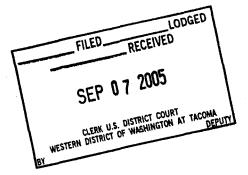
# **CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating e civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

1. (a) PLAINTIFFS	S		DEFENDANT	rs	
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☐ 160 Stockholders' Suits	355 Motor Vehicle	Property Damage	Act	3 862 Black Lung (923)	875 Customer Challenge
190 Other Contract	Product Liability	385 Property Damage	720 Labor/Mgmt. Relations	☐ 863 DIWC/DIWW (405(g))	12 USC 3410
☐ 195 Contract Product Liability ☐ 196 Franchise	360 Other Personal Injury	Product Liability	730 Labor/Mgmt.Reporting & Disclosure Act	☐ 864 SSID Title XVI ☐ 865 RSI (405(g))	890 Other Statutory Actions B91 Agricultural Acts
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210 Land Condemnation	1 441 Voting	510 Motions to Vacate	790 Other Labor Litigation	☐ 870 Taxes (U.S. Plaintiff	893 Environmental Matters
	442 Employment 443 Housing/	Sentence Habeas Corpus:	791 Empl. Ret. Inc. Security Act	or Defendant)  7 871 IRS—Third Party	894 Energy Allocation Act 895 Freedom of Information
240 Torts to Land	Accommodations	530 General	South Act	26 USC 7609	Act
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VI. CAUSE OF ACTION	Brief description of cau	ise.	e closure actions violations		I.S. Constitution
II. REQUESTED IN		S A CLASS ACTION	DEMAND \$		if demanded in complaint:
COMPLAINT:	UNDER F.R.C.P. 2		DEMAND \$	JURY DEMAND:	☐ Yes ☐ No
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# **DEFENDANTS**

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense;
PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and
BILBRAY, JAMES H.
COYLE, PHILLIP E.
GEHMAN, JR., HAROLD W.
HANSEN, JAMES V.
HILL, JAMES T.
NEWTON, LLOYD W.
SKINNER, SAMUAL K. and
TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and Realignment Commission,



# UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CHRISTINE O. GREGOIRE, Governor of the State of Washington,

Plaintiff,

v.

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DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as members of the Defense Base Closure and Realignment Commission,

Defendants.

№C05 558\$

**COMPLAINT** 

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

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capacities as members of the Defense Base Closure and Realignment Commission, as follows:

### I. NATURE OF THE CASE

- 1. This case arises out of defendants' attempts, unilaterally and without seeking or obtaining approval from the Governor of the State of Washington, to fundamentally change units of the Washington Air National Guard under the guise of a recommendation made pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign Fairchild Air Force Base" contains the following four elements, which will hereafter be collectively referred to as the "Proposed Realignment":
  - the 141st Air Refueling Wing of the Washington Air National Guard will (a) "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane, Washington ("Fairchild");
  - all eight of the KC-135R aircraft assigned to Washington Air National Guard's 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard Refueling Wing;
  - the 256<sup>th</sup> Combat Communications Squadron of the Washington Air National (c) Guard currently located at the Four Lakes Communications Station outside Cheney, Washington will be "relocated" to Fairchild; and
  - the 242<sup>nd</sup> Combat Communications Squadron of the Washington Air National Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to Fairchild.
- Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff 2. asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment: (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of federal laws independent of the BRAC Act that expressly grant rights to the State of

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Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and (c) infringes on the right of the State to maintain an organized militia in violation of the Second Amendment to the United States Constitution.

# II. JURISDICTION AND VENUE

- 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.
- 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391 because the official residence of the Governor of the State of Washington is in the Western District of Washington.

### III. PARTIES

- 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and brings this action in her official capacity and on behalf of the State. Pursuant to the Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020), Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are actively in the service of the United States.
- 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense of the United States and, pursuant to the BRAC Act is authorized to make recommendations for the closure and realignment of military installations in the United States to the Defense Base Closure and Realignment Commission, and to implement those recommendations ultimately approved. He is sued in his official capacity only.
- 7. Defendant Anthony J. Principi has been named by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC Commission"). He is sued in his official capacity only.

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Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr., 8. James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner have been named by the President of the United States to be members of the BRAC Commission. They are sued in their official capacities only.

#### IV. THE BRAC ACT

- 9. The stated purpose of the BRAC Act is to "provide a fair process that will result in the timely closure and realignment of military installations inside the United States." BRAC Act § 2901(b).
  - 10. As used in the BRAC Act, the term "military installation" is defined as:

a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

BRAC Act § 2910(4).

11. As used in the BRAC Act, the term "realignment" includes:

any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

BRAC Act § 2910(5).

Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the 12. Department of Defense was required to publish in the Federal Register and transmit to the congressional defense committees and the BRAC Commission a "list of the military installations inside the United States that the Secretary recommends for closure or realignment" consistent with the BRAC Act, the force-structure plan and military value and Defendant Rumsfeld submitted his BRAC other criteria established thereunder. recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in the May 16, 2005 Federal Register.

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- Defendant Rumsfeld's BRAC recommendations included the Proposed 13. Realignment an issue in this case.
- 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is empowered to consider the recommendations of the Secretary of Defense and make recommendations to the President of the United States for the closure and realignment of military installations consistent with the BRAC Act.
- 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27, 2005 to consider and make the base closure and realignment recommendations it would forward to the President by September 8, 2005.
- 16. On August 26, 2005, the BRAC Commission voted to adopt defendant Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its recommendations for military installation closure and realignment to the President by September 8, 2005, including the Proposed Realignment.
- 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.
- 18. If the President disapproves any of the BRAC Commission's recommendations, the BRAC Commission has until October 20, 2005 in which to transmit revised recommendations to the President. BRAC Act §§ 2903, 2914.
- If the President disapproves the revised recommendations, the 2005 BRAC 19. process is terminated. BRAC Act §§ 2903, 2914.
- 20. If the President approves either the original or revised recommendations, he must send the approved list and his certification to Congress. If the President approves a revised list, his approval and certification to Congress must occur by November 7, 2005. BRAC Act § 2903, 2914.
- If Congress does not enact a resolution disapproving the approved 21. recommendations within 45 legislative days after receiving them from the President, defendant

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Rumsfeld must close and realign all military installations as recommended. BRAC Act § 2904(a).

### V. NATURE OF THE NATIONAL GUARD

- 22. The National Guard has a dual nature, comprising both units of state militias and a part of the federal armed forces when those units are called into federal service. The National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the United States Constitution. The Washington National Guard constitutes a portion of the reserve component of the armed forces.
- 23. States have the right to control the National Guard when not in federal service. Members of the National Guard serve in the state militia under the command of the Governor unless they are called into federal service.
- 24. The National Guard is the only military force shared by the states and the federal government, and ready to carry out missions for both state and federal purposes.
- 25. The balance struck by Congress between the federal and state nature of the National Guard is reflected in the various statutes requiring the consent of the Governor for decisions which change the personnel and forces available for state duties and the way in which such consent is obtained.
- 26. Currently and during the BRAC process, the Washington Air National Guard's 141st, 256th and 242d units have not been federally mobilized into Title 10 federal status.

### VI. THE PROPOSED REALIGNMENT

27. Included in defendant Rumsfeld's base closure or realignment list was the following recommendation regarding Fairchild Air Force Base and referred to herein as the Proposed Realignment:

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

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Fairchild Air Force Base, and the 141<sup>st</sup> Air Refueling Wing's eight KC-135R aircraft are distributed to the 185<sup>th</sup> Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, Iowa. The 256<sup>th</sup> Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

70 FR 28046, May 16, 2005. See Exhibit A.

- 28. The BRAC Commission voted to approve the basic elements of the Proposed Realignment and include the recommendation in its report to the President for the 2005 closure or realignment of military installations pursuant to the BRAC Act.
- 29. It is expected that the BRAC Commission's report to the President due by September 8, 2005 will include a recommendation on the Proposed Realignment substantially similar to the language contained in defendant Rumsfeld's list as published in the *Federal Register*.
- 30. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to the Proposed Realignment.
- 31. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to make a change in the location, branch, organization or allotment of the 141<sup>st</sup> Air Refueling Wing or its KC-135s, the 256<sup>th</sup> Combat Communications Squadron, the 242<sup>d</sup> Combat Communications Squadron, or any unit of the Washington Air National Guard.
- 32. If the Governor had been requested during the BRAC process to consent to the Proposed Realignment, Governor Gregoire would not have done so.
- 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire expressed her "strong objections to the Department of Defense's recommendations to the [BRAC Commission] to realign the Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing" and stated she "emphatically [did] *not* consent to the realignment of the 141<sup>st</sup> Air

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Refueling Wing or the removal, relocation, or reassignment of the 141st, s unit equipped primary assigned KC-135 aircraft." See Exhibit B.

- 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for such actions." See Exhibit B.
- 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his "proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution." See Exhibit B.
- 36. In recommending the Proposed Realignment, the BRAC Commission contravened the legal advice provided by its own legal counsel in a memorandum dated July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch, organization or allotment, or relocation or withdrawal of a National Guard unit without the consent of the Governor where the unit was located.

# Associating the 141st Air Refueling Wing

- The first portion of the Proposed Realignment would "associate" Washington 37. Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing at Fairchild.
- 38. In his Federal Register notice, Defendant Rumsfield does not define or explain what is meant by his recommendation that the Washington Air National Guard's 141st Air Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also does not define the term "associate".
- The 141st Air Refueling Wing is a Washington Air National Guard unit located 39. entirely within the State of Washington, at Fairchild.
- The 141st Air Refueling Wing is a self-sustaining unit used for both federal and 40. state missions. Members of the 141st have engaged in international, national, regional, state

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and local missions, including homeland security and emergency response activities. The 141st has been ordered into state active duty status by prior governors of the State to respond to the eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local law enforcement.

If the 141<sup>st</sup> Air Refueling Wing were to "associate" with the Air Force's 92d Air 41. Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither the Governor nor the Adjutant General of the Washington Military Department would maintain operational control over the day to day operations of the 141st.

# Distributing the 141<sup>st</sup>'s KC-135s

- 42. The second portion of the Proposed Realignment recommends that all eight of the 141st Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air National Guard Refueling Wing.
- 43. This recommendation would leave the Washington Air National Guard without any primary authorized fixed wing aircraft.
- 44. Without its eight KC-135R aircraft, the Washington Air National Guard's ability to control required aircraft training missions is eliminated, its ability to maintain air crew readiness is restricted, and its ability to recruit and retain officers and enlisted members within the Washington Air National Guard is substantially reduced.
- The Proposed Realignment of the 141<sup>st</sup> would strip the Governor of all direct 45. emergency access to the 141st's KC-135R aircraft for tactical airlift missions in response to local, state, regional and national emergencies. In addition to refueling capabilities, the KC-135s can be used to meet transport and cargo needs. The 141st Air Refueling Wing and its KC-135 aircraft have been integral components of the State's planned response to wildfires, floods and other natural disasters in the State.

- 46. The Proposed Realignment of the 141st would prevent the Governor from carrying out the constitutional and statutory responsibilities of her office to provide for public safety and the security of the homeland.
- 47. In order to provide needed help responding to the devastating effects of Hurricane Katrina, the Governor has approved use of the KC-135 aircraft and members of the 141<sup>st</sup> Air Refueling Wing. The Governor's September 2, 2005 activation of the Washington Air National Guard specifically authorizes use of the KC-135 aircraft. To date, the 141st and its KC-135s have moved over 500 National Guard members, 50 tons of cargo and engaged in 35 flying sorties to New Orleans and Gulfport in response to Hurricane Katrina, and these numbers will increase. The Proposed Realignment would prevent the Governor from extending this type of assistance to states under the National Response Plan and the national **Emergency Management Assistance Compact.**

# Relocating the 256<sup>th</sup>

- 48. The third portion of the Proposed Realignment recommends that Washington Air National Guard's 256th Combat Communications Squadron, currently wholly located at the Four Lakes Communication Station outside Cheney, Washington, be "relocated" to Fairchild.
- 49. Four Lakes Communications Station is a federally owned facility under license to the State of Washington.
- Relocating the 256<sup>th</sup> to Fairchild without the Governor's consent would impair *5*0. the Governor's rights and obligations as Commander-in-Chief of the state militia.

# Relocating the 242<sup>d</sup>

- 51. The fourth portion of the Proposed Realignment recommends that Washington Air National Guard's 242<sup>nd</sup> Combat Communications Squadron, currently wholly located at Geiger Field in Spokane, Washington, be "relocated" to Fairchild.
- Geiger Field is not a federally owned facility, it is owned by the State of 52. Washington.

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53. Relocating the 242<sup>d</sup> from state-owned land to Fairchild without the Governor's consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia, and impair her ability to interact with and access one of her state National Guard units.

## VII. FIRST CAUSE OF ACTION

## **Exceeds BRAC Act Authority**

- 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53, inclusive, as though fully set forth herein.
- 55. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or location of the 141<sup>st</sup>, 256<sup>th</sup> and 242<sup>d</sup> units, and the removal and transfer of the Washington Air National Guard's KC-135 aircraft.
- 56. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped or organized.
- 57. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the organization of the Washington Air National Guard.
- 58. Defendants' recommendations to "associate" the 141<sup>st</sup> unit and "distribute" the KC-135s assigned to it are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- 59. Defendants' recommendations to relocate the 256<sup>th</sup> unit and the 242<sup>d</sup> unit are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- 60. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants do not have the authority under the BRAC Act

to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants' authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.

61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

## VIII. SECOND CAUSE OF ACTION

# Violates 32 U.S.C. § 104

- 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61, inclusive, as though fully set forth herein.
- 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the units and headquarters of its National Guard".
- 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor".
- 65. The State has fixed the locations of the 141<sup>st</sup>, 256<sup>th</sup> and 242<sup>d</sup> units, which are units located entirely with the State.
- 66. Defendants' Proposed Realignment would change the location, branch, organization and/or allotment of the 141<sup>st</sup>, 256<sup>th</sup> and the 242<sup>d</sup>, and the Governor has not granted her approval for such actions.
- 67. Defendants' Proposed Realignment, without gubernatorial consent, violates 32 U.S.C. § 104.
- 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment, without first obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

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may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.

69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

### IX. THIRD CAUSE OF ACTION

# Violates the Second Amendment

- 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69, inclusive, as though fully set forth herein.
- 71. Under the Constitution of the United States, authority over the military is divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second Amendment states: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II. The guarantee of the Second Amendment regarding states' rights to a well-regulated militia was made for the purpose of assuring the continuation and effectiveness of state militia.
- 72. Defendants' Proposed Realignment would infringe upon the State's constitutional right to maintain a well regulated militia, and violates the Second Amendment.
- Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a 73. Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional; that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.
- Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary 74. to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

## X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against defendants and that the Court grant the following relief:

- A. An Order declaring that defendants' Proposed Realignment exceeds their statutory authority under the BRAC Act, is null and void, and shall not be implemented;
- B. An Order declaring that the defendants' Proposed Realignment violates 32 U.S.C. § 104, is null and void, and shall not be implemented;
- C. An Order declaring that the defendants' Proposed Realignment violates the Second Amendment to the United States Constitution, is null and void, and shall not be implemented;
- D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and
- E. Further Orders providing such additional legal or equitable relief as this Court may deem just and proper.

DATED this 7th day of September, 2005.

Respectfully submitted,

ROB MCKENNA Attorney General

SARA J. FINLAY, WSBA # 821

Senior Counsel

Attorneys for Plaintiff

Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

### Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base, CA; Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill, establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

### Langley Air Force Base, VA

Recommendation: Realign Langley
Air Force Base, VA. Realign base-level
F-15 avionics intermediate maintenance
from Langley Air Force Base to Tyndall
Air Force Base, FL, by establishing a
Centralized Intermediate Repair Facility
(CIRF) at Tyndall Air Force Base, FL, for
F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond International Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F–16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft)

### Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

### General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AR; Luke Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations

Joint Center of Excellence for Religious Training & Education

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE Q. GREGOIRE
Governor



### STATE OF WASHINGTON

## OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld Secretary of Defense 1000 Defense Pentagon Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me — and all those who succeed me as Governor of the state of Washington — from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141<sup>st</sup> Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without any prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do not consent to the realignment of the 141<sup>st</sup> Air Refueling Wing or the removal, relocation, or reassignment of the 141<sup>st</sup>'s unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

The Honorable Donald H. Rumsfeld August 9, 2005 Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,

Christine Obegin

Christine O. Gregoire

Governor

ec: Anthony J. Principi, Chair, BRAC Commission

The Honorable Maria Cantwell, U.S. Senate

The Honorable Patty Murray, U.S. Senate

The Honorable Brian Baird, U.S. House of Representatives

The Honorable Norm Dicks, U.S. House of Representatives

The Honorable Richard Hastings, U.S. House of Representatives

The Honorable Jay Inslee, U.S. House of Representatives

The Honorable Rick Larsen, U.S. House of Representatives

The Honorable Jim McDermott, U.S. House of Representatives

The Honorable Cathy McMorris, U.S. House of Representatives

The Honorable Dave Reichert, U.S. House of Representatives

The Honorable Adam Smith, U.S. House of Representatives

The Honorable Mike Huckabee, Chair, National Governors Association

Doug Clapp, Office of the Governor

# UNITED STATES DISTRICT COURT

Western District of Washington
CHRISTINE O. GREGOIRE, Governor of the State of Washington,
Plaintiff, SUMMONS IN A CIVIL CASE V.
DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as members of the Defense Base Closure and Realignment Commission,
Defendants. TO: (Name and address of Defendant)
Lloyd W. Newton 2005 Defense Base Closure and Realignment Commission 2521 S. Clark St., Suite 600 Arlington, VA 22202
YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)
Sara J. Finlay, Senior Counsel Office of the Attorney General Government Operations Division PO Box 40108 Olympia, WA 98504-0108
an answer to the complaint which is served on you with this summons, within 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.
BRUCE RIFKIN SEP - 7
CLERK DATE  (By) DEPUTY CLERK
• •

# **CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating he civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

i. (a) PLAINTIFF	S		DEFENDANT	rs	
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• •	-	Box 40108, Olympia, W	A SEP 0 7	-	
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☐ 120 Marine ☐ 130 Miller Act	310 Airplane 315 Airplane Product	362 Personal Injury - Med. Malpractice	620 Other Food & Drug 625 Drug Related Seizure	28 USC 157	410 Antitrust 430 Banks and Banking
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☐ 150 Recovery of Overpayment		Product Liability	G 630 Liquor Laws	DESCRIPTION OF THE PROPERTY OF	
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Student Loans	340 Marine	PERSONAL PROPERTY	Safety/Health		490 Cable/Sat TV
(Excl. Veterans)  153 Recovery of Overpayment	345 Marine Product Liability	370 Other Fraud 371 Truth in Lending	690 Other		810 Selective Service 850 Securities/Commodities/
of Veteran's Benefits	350 Motor Vehicle	371 Truth in Lending 380 Other Personal	710 Fair Labor Standards	□ 861 HIA (1395ff)	Exchange
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle	Property Damage	i Act	☐ 862 Black Lung (923)	☐ 875 Customer Challenge
190 Other Contract	Product Liability	385 Property Damage	720 Labor/Mgmt. Relations	☐ 863 DIWC/DIWW (405(g))	12 USC 3410
☐ 195 Contract Product Liability ☐ 196 Franchise	360 Other Personal Injury	Product Liability	730 Labor/Mgmt.Reporting & Disclosure Act	864 SSID Title XVI	890 Other Statutory Actions 391 Agricultural Acts
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220 Foreclosure	442 Employment	Sentence	791 Empl. Ret. Inc.	or Defendant)	894 Energy Allocation Act
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COMPLAINT:	UNDER F.R.C.	P. 23		JURY DEMAND:	☐ Yes ☐ No
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RECEIPT # AMO	DUNT	APPLYING IFP	JUDGE	MAG. JUD	GE

# **DEFENDANTS**

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense;
PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and
BILBRAY, JAMES H.
COYLE, PHILLIP E.
GEHMAN, JR., HAROLD W.
HANSEN, JAMES V.
HILL, JAMES T.
NEWTON, LLOYD W.
SKINNER, SAMUAL K. and
TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and Realignment Commission,



# UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CHRISTINE O. GREGOIRE, Governor of the State of Washington,

Plaintiff,

v.

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DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as members of the Defense Base Closure and Realignment Commission,

Defendants.

№C05 558\$

COMPLAINT

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

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capacities as members of the Defense Base Closure and Realignment Commission, as follows:

### T. NATURE OF THE CASE

- 1. This case arises out of defendants' attempts, unilaterally and without seeking or obtaining approval from the Governor of the State of Washington, to fundamentally change units of the Washington Air National Guard under the guise of a recommendation made pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign Fairchild Air Force Base" contains the following four elements, which will hereafter be collectively referred to as the "Proposed Realignment":
  - the 141st Air Refueling Wing of the Washington Air National Guard will (a) "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane, Washington ("Fairchild");
  - all eight of the KC-135R aircraft assigned to Washington Air National Guard's 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard Refueling Wing:
  - the 256th Combat Communications Squadron of the Washington Air National (c) Guard currently located at the Four Lakes Communications Station outside Cheney, Washington will be "relocated" to Fairchild; and
  - the 242<sup>nd</sup> Combat Communications Squadron of the Washington Air National (d) Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to Fairchild.
- 2. Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment: (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of federal laws independent of the BRAC Act that expressly grant rights to the State of

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Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and (c) infringes on the right of the State to maintain an organized militia in violation of the Second Amendment to the United States Constitution.

### П. JURISDICTION AND VENUE

- This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and 3. Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.
- Venue is proper in the Western District of Washington under 28 U.S.C. § 1391 4. because the official residence of the Governor of the State of Washington is in the Western District of Washington.

### III. **PARTIES**

- 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and brings this action in her official capacity and on behalf of the State. Pursuant to the Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020), Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are actively in the service of the United States.
- Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense 6. of the United States and, pursuant to the BRAC Act is authorized to make recommendations for the closure and realignment of military installations in the United States to the Defense Base Closure and Realignment Commission, and to implement those recommendations ultimately approved. He is sued in his official capacity only.
- Defendant Anthony J. Principi has been named by the President of the United 7. States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC Commission"). He is sued in his official capacity only.

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8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner have been named by the President of the United States to be members of the BRAC Commission. They are sued in their official capacities only.

## IV. THE BRAC ACT

- 9. The stated purpose of the BRAC Act is to "provide a fair process that will result in the timely closure and realignment of military installations inside the United States." BRAC Act § 2901(b).
  - 10. As used in the BRAC Act, the term "military installation" is defined as:

a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

BRAC Act § 2910(4).

11. As used in the BRAC Act, the term "realignment" includes:

any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

BRAC Act § 2910(5).

12. Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the Department of Defense was required to publish in the *Federal Register* and transmit to the congressional defense committees and the BRAC Commission a "list of the military installations inside the United States that the Secretary recommends for closure or realignment" consistent with the BRAC Act, the force-structure plan and military value and other criteria established thereunder. Defendant Rumsfeld submitted his BRAC recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in the May 16, 2005 *Federal Register*.

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- 13. Defendant Rumsfeld's BRAC recommendations included the Proposed Realignment an issue in this case.
- 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is empowered to consider the recommendations of the Secretary of Defense and make recommendations to the President of the United States for the closure and realignment of military installations consistent with the BRAC Act.
- 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27, 2005 to consider and make the base closure and realignment recommendations it would forward to the President by September 8, 2005.
- 16. On August 26, 2005, the BRAC Commission voted to adopt defendant Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its recommendations for military installation closure and realignment to the President by September 8, 2005, including the Proposed Realignment.
- 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.
- 18. If the President disapproves any of the BRAC Commission's recommendations, the BRAC Commission has until October 20, 2005 in which to transmit revised recommendations to the President. BRAC Act §§ 2903, 2914.
- 19. If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. BRAC Act §§ 2903, 2914.
- 20. If the President approves either the original or revised recommendations, he must send the approved list and his certification to Congress. If the President approves a revised list, his approval and certification to Congress must occur by November 7, 2005. BRAC Act § 2903, 2914.
- 21. If Congress does not enact a resolution disapproving the approved recommendations within 45 legislative days after receiving them from the President, defendant

Rumsfeld must close and realign all military installations as recommended. BRAC Act § 2904(a).

#### V. NATURE OF THE NATIONAL GUARD

- 22. The National Guard has a dual nature, comprising both units of state militias and a part of the federal armed forces when those units are called into federal service. The National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the United States Constitution. The Washington National Guard constitutes a portion of the reserve component of the armed forces.
- 23. States have the right to control the National Guard when not in federal service. Members of the National Guard serve in the state militia under the command of the Governor unless they are called into federal service.
- 24. The National Guard is the only military force shared by the states and the federal government, and ready to carry out missions for both state and federal purposes.
- 25. The balance struck by Congress between the federal and state nature of the National Guard is reflected in the various statutes requiring the consent of the Governor for decisions which change the personnel and forces available for state duties and the way in which such consent is obtained.
- 26. Currently and during the BRAC process, the Washington Air National Guard's 141<sup>st</sup>, 256<sup>th</sup> and 242<sup>d</sup> units have not been federally mobilized into Title 10 federal status.

#### VI. THE PROPOSED REALIGNMENT

27. Included in defendant Rumsfeld's base closure or realignment list was the following recommendation regarding Fairchild Air Force Base and referred to herein as the Proposed Realignment:

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141<sup>st</sup> Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

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Fairchild Air Force Base, and the 141<sup>st</sup> Air Refueling Wing's eight KC-135R aircraft are distributed to the 185<sup>th</sup> Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, Iowa. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

70 FR 28046, May 16, 2005. See Exhibit A.

- 28. The BRAC Commission voted to approve the basic elements of the Proposed Realignment and include the recommendation in its report to the President for the 2005 closure or realignment of military installations pursuant to the BRAC Act.
- 29. It is expected that the BRAC Commission's report to the President due by September 8, 2005 will include a recommendation on the Proposed Realignment substantially similar to the language contained in defendant Rumsfeld's list as published in the Federal Register.
- 30. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to the Proposed Realignment.
- 31. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to make a change in the location, branch, organization or allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications Squadron, the 242<sup>d</sup> Combat Communications Squadron, or any unit of the Washington Air National Guard.
- 32. If the Governor had been requested during the BRAC process to consent to the Proposed Realignment, Governor Gregoire would not have done so.
- 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire expressed her "strong objections to the Department of Defense's recommendations to the [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling Wing" and stated she "emphatically [did] not consent to the realignment of the 141st Air

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Refueling Wing or the removal, relocation, or reassignment of the 141<sup>st</sup>'s unit equipped primary assigned KC-135 aircraft." See Exhibit B.

- 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for such actions." See Exhibit B.
- 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his "proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution." See Exhibit B.
- 36. In recommending the Proposed Realignment, the BRAC Commission contravened the legal advice provided by its own legal counsel in a memorandum dated July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch, organization or allotment, or relocation or withdrawal of a National Guard unit without the consent of the Governor where the unit was located.

## Associating the 141<sup>st</sup> Air Refueling Wing

- 37. The <u>first</u> portion of the Proposed Realignment would "associate" Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing with the Air Force's 92d Air Refueling Wing at Fairchild.
- 38. In his *Federal Register* notice, Defendant Rumsfield does not define or explain what is meant by his recommendation that the Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also does not define the term "associate".
- 39. The 141<sup>st</sup> Air Refueling Wing is a Washington Air National Guard unit located entirely within the State of Washington, at Fairchild.
- 40. The 141<sup>st</sup> Air Refueling Wing is a self-sustaining unit used for both federal and state missions. Members of the 141<sup>st</sup> have engaged in international, national, regional, state

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and local missions, including homeland security and emergency response activities. The 141<sup>st</sup> has been ordered into state active duty status by prior governors of the State to respond to the eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local law enforcement.

41. If the 141<sup>st</sup> Air Refueling Wing were to "associate" with the Air Force's 92d Air Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither the Governor nor the Adjutant General of the Washington Military Department would maintain operational control over the day to day operations of the 141<sup>st</sup>.

## Distributing the 141st's KC-135s

- 42. The <u>second</u> portion of the Proposed Realignment recommends that all eight of the 141<sup>st</sup> Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air National Guard Refueling Wing.
- 43. This recommendation would leave the Washington Air National Guard without any primary authorized fixed wing aircraft.
- 44. Without its eight KC-135R aircraft, the Washington Air National Guard's ability to control required aircraft training missions is eliminated, its ability to maintain air crew readiness is restricted, and its ability to recruit and retain officers and enlisted members within the Washington Air National Guard is substantially reduced.
- 45. The Proposed Realignment of the 141<sup>st</sup> would strip the Governor of all direct emergency access to the 141<sup>st</sup>'s KC-135R aircraft for tactical airlift missions in response to local, state, regional and national emergencies. In addition to refueling capabilities, the KC-135s can be used to meet transport and cargo needs. The 141<sup>st</sup> Air Refueling Wing and its KC-135 aircraft have been integral components of the State's planned response to wildfires, floods and other natural disasters in the State.

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- 46. The Proposed Realignment of the 141<sup>st</sup> would prevent the Governor from carrying out the constitutional and statutory responsibilities of her office to provide for public safety and the security of the homeland.
- 47. In order to provide needed help responding to the devastating effects of Hurricane Katrina, the Governor has approved use of the KC-135 aircraft and members of the 141st Air Refueling Wing. The Governor's September 2, 2005 activation of the Washington Air National Guard specifically authorizes use of the KC-135 aircraft. To date, the 141<sup>st</sup> and its KC-135s have moved over 500 National Guard members, 50 tons of cargo and engaged in 35 flying sorties to New Orleans and Gulfport in response to Hurricane Katrina, and these numbers will increase. The Proposed Realignment would prevent the Governor from extending this type of assistance to states under the National Response Plan and the national Emergency Management Assistance Compact.

## Relocating the 256th

- 48. The third portion of the Proposed Realignment recommends that Washington Air National Guard's 256th Combat Communications Squadron, currently wholly located at the Four Lakes Communication Station outside Cheney, Washington, be "relocated" to Fairchild.
- 49. Four Lakes Communications Station is a federally owned facility under license to the State of Washington.
- Relocating the 256<sup>th</sup> to Fairchild without the Governor's consent would impair 50. the Governor's rights and obligations as Commander-in-Chief of the state militia.

# Relocating the 242<sup>d</sup>

- 51. The fourth portion of the Proposed Realignment recommends that Washington Air National Guard's 242<sup>nd</sup> Combat Communications Squadron, currently wholly located at Geiger Field in Spokane, Washington, be "relocated" to Fairchild.
- 52. Geiger Field is not a federally owned facility, it is owned by the State of Washington.

53. Relocating the 242<sup>d</sup> from state-owned land to Fairchild without the Governor's consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia, and impair her ability to interact with and access one of her state National Guard units.

#### VII. FIRST CAUSE OF ACTION

## **Exceeds BRAC Act Authority**

- 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53, inclusive, as though fully set forth herein.
- 55. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or location of the 141<sup>st</sup>, 256<sup>th</sup> and 242<sup>d</sup> units, and the removal and transfer of the Washington Air National Guard's KC-135 aircraft.
- 56. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped or organized.
- 57. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the organization of the Washington Air National Guard.
- 58. Defendants' recommendations to "associate" the 141<sup>st</sup> unit and "distribute" the KC-135s assigned to it are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- 59. Defendants' recommendations to relocate the 256<sup>th</sup> unit and the 242<sup>d</sup> unit are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- 60. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants do not have the authority under the BRAC Act

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to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants' authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.

61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

## VIII. SECOND CAUSE OF ACTION

## **Violates 32 U.S.C. § 104**

- 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61, inclusive, as though fully set forth herein.
- 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the units and headquarters of its National Guard".
- 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor".
- 65. The State has fixed the locations of the 141<sup>st</sup>, 256<sup>th</sup> and 242<sup>d</sup> units, which are units located entirely with the State.
- 66. Defendants' Proposed Realignment would change the location, branch, organization and/or allotment of the 141<sup>st</sup>, 256<sup>th</sup> and the 242<sup>d</sup>, and the Governor has not granted her approval for such actions.
- 67. Defendants' Proposed Realignment, without gubernatorial consent, violates 32 U.S.C. § 104.
- 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment, without first obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

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may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.

69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

#### IX. THIRD CAUSE OF ACTION

## Violates the Second Amendment

- 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69, inclusive, as though fully set forth herein.
- 71. Under the Constitution of the United States, authority over the military is divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second Amendment states: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II. The guarantee of the Second Amendment regarding states' rights to a well-regulated militia was made for the purpose of assuring the continuation and effectiveness of state militia.
- 72. Defendants' Proposed Realignment would infringe upon the State's constitutional right to maintain a well regulated militia, and violates the Second Amendment.
- 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional; that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.
- 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

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#### X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against defendants and that the Court grant the following relief:

- A. An Order declaring that defendants' Proposed Realignment exceeds their statutory authority under the BRAC Act, is null and void, and shall not be implemented;
- В. An Order declaring that the defendants' Proposed Realignment violates 32 U.S.C. § 104, is null and void, and shall not be implemented;
- C. An Order declaring that the defendants' Proposed Realignment violates the Second Amendment to the United States Constitution, is null and void, and shall not be implemented:
- D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and
- E. Further Orders providing such additional legal or equitable relief as this Court may deem just and proper.

DATED this 7th day of September, 2005.

Respectfully submitted,

ROB MCKENNA Attorney General

Senior Counsel

Attorneys for Plaintiff

Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

#### Lackland Air Force Base, TX

Recommendation: Realign Lackland
Air Force Base, TX. Relocate the
Standard Air Munitions Package
(STAMP)/Standard Tank, Rack,
Adaptor, and Pylon Packages (STRAPP)
function from Lackland Air Force Base,
Medina Annex to McConnell Air Force
Base, KS, and transfer the mission to the
Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base, CA; Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill. establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

#### Langley Air Force Base, VA

Recommendation: Realign Langley
Air Force Base, VA. Realign base-level
F-15 avionics intermediate maintenance
from Langley Air Force Base to Tyndall
Air Force Base, FL, by establishing a
Centralized Intermediate Repair Facility
(CIRF) at Tyndall Air Force Base, FL, for
F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond International Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F–16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft).

#### Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base

# General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations

Joint Center of Excellence for Religious Training & Education

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE O. GREGOIRE
Gravernor



#### STATE OF WASHINGTON

### OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98304-0002 • (360) 733-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld Secretary of Defense 1000 Defense Pentagon Washington, DC 20301-1000

Dear Mr. Secretary;

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me – and all those who succeed me as Governor of the state of Washington – from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141<sup>st</sup> Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without any prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do not consent to the realignment of the 141<sup>st</sup> Air Refueling Wing or the removal, relocation, or reassignment of the 141<sup>st</sup>'s unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

The Honorable Donald H. Rumsfeld August 9, 2005 Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,

Christine O. Gregoire

Governor

Anthony J. Principi, Chair, BRAC Commission cc:

The Honorable Maria Cantwell, U.S. Senate

The Honorable Patty Murray, U.S. Senate

The Honorable Brian Baird, U.S. House of Representatives

The Honorable Norm Dicks, U.S. House of Representatives

The Honorable Richard Hastings, U.S. House of Representatives

The Honorable Jay Inslee, U.S. House of Representatives

The Honorable Rick Larsen, U.S. House of Representatives

The Honorable Jim McDermott, U.S. House of Representatives

The Honorable Cathy McMorris, U.S. House of Representatives

The Honorable Dave Reichert, U.S. House of Representatives

The Honorable Adam Smith, U.S. House of Representatives

The Honorable Mike Huckabee, Chair, National Governors Association

Doug Clapp, Office of the Governor

## United States District Court

District of Washington Western CHRISTINE O. GREGOIRE, Governor of the State of Washington, Plaintiff. SUMMONS IN A CIVIL CASE V. CASE NUMBER: C05 5583  $^{\text{TM}}$ DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as members of the Defense Base Closure and Realignment Commission, Defendants. TO: (Name and address of Defendant) Anthony J. Principi, Chairman 2005 Defense Base Closure and Realignment Commission 2521 S. Clark St., Suite 600 Arlington, VA 22202 YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address) Sara J. Finlay, Senior Counsel Office of the Attorney General **Government Operations Division** PO Box 40108 Olympia, WA 98504-0108 an answer to the complaint which is served on you with this summons, within of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service. BRUCE RIFKIN SEP -7 2005

DATE

(By) DEPUTY CLERK

CLERK

# **CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the purpose of initiating experience of the Clerk of Court for the Clerk o

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(c) Attorney's (Firm No.	me, Address, and Telephone Number)	Avanage	U U \	
• • • •	torney General, PO Box 40108, Olympia	Attorneys 200	5 <sup>wn)</sup>	
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## **DEFENDANTS**

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense;
PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and
BILBRAY, JAMES H.
COYLE, PHILLIP E.
GEHMAN, JR., HAROLD W.
HANSEN, JAMES V.
HILL, JAMES T.
NEWTON, LLOYD W.
SKINNER, SAMUAL K. and
TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and Realignment Commission,



## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CHRISTINE O. GREGOIRE, Governor of the State of Washington,

Plaintiff,

v.

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DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as members of the Defense Base Closure and Realignment Commission,

Defendants.

NC05 558\$

COMPLAINT

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

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capacities as members of the Defense Base Closure and Realignment Commission, as follows:

#### I. NATURE OF THE CASE

- 1. This case arises out of defendants' attempts, unilaterally and without seeking or obtaining approval from the Governor of the State of Washington, to fundamentally change units of the Washington Air National Guard under the guise of a recommendation made pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign Fairchild Air Force Base" contains the following four elements, which will hereafter be collectively referred to as the "Proposed Realignment":
  - the 141st Air Refueling Wing of the Washington Air National Guard will (a) "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane, Washington ("Fairchild");
  - all eight of the KC-135R aircraft assigned to Washington Air National Guard's 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard Refueling Wing:
  - the 256<sup>th</sup> Combat Communications Squadron of the Washington Air National (c) Guard currently located at the Four Lakes Communications Station outside Cheney, Washington will be "relocated" to Fairchild; and
  - the 242<sup>nd</sup> Combat Communications Squadron of the Washington Air National Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to Fairchild.
- 2. Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment: (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of federal laws independent of the BRAC Act that expressly grant rights to the State of

Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and (c) infringes on the right of the State to maintain an organized militia in violation of the Second Amendment to the United States Constitution.

#### П. JURISDICTION AND VENUE

- 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.
- 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391 because the official residence of the Governor of the State of Washington is in the Western District of Washington.

#### III. **PARTIES**

- 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and brings this action in her official capacity and on behalf of the State. Pursuant to the Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020), Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are actively in the service of the United States.
- 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense of the United States and, pursuant to the BRAC Act is authorized to make recommendations for the closure and realignment of military installations in the United States to the Defense Base Closure and Realignment Commission, and to implement those recommendations ultimately approved. He is sued in his official capacity only.
- 7. Defendant Anthony J. Principi has been named by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC Commission"). He is sued in his official capacity only.

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Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr., 8. James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner have been named by the President of the United States to be members of the BRAC Commission. They are sued in their official capacities only.

#### IV. THE BRAC ACT

- The stated purpose of the BRAC Act is to "provide a fair process that will result 9. in the timely closure and realignment of military installations inside the United States." BRAC Act § 2901(b).
  - 10. As used in the BRAC Act, the term "military installation" is defined as:

a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

BRAC Act § 2910(4).

11. As used in the BRAC Act, the term "realignment" includes:

any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

BRAC Act § 2910(5).

Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the 12. Department of Defense was required to publish in the Federal Register and transmit to the congressional defense committees and the BRAC Commission a "list of the military installations inside the United States that the Secretary recommends for closure or realignment" consistent with the BRAC Act, the force-structure plan and military value and Defendant Rumsfeld submitted his BRAC other criteria established thereunder. recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in the May 16, 2005 Federal Register.

- 13. Defendant Rumsfeld's BRAC recommendations included the Proposed Realignment an issue in this case.
- 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is empowered to consider the recommendations of the Secretary of Defense and make recommendations to the President of the United States for the closure and realignment of military installations consistent with the BRAC Act.
- 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27, 2005 to consider and make the base closure and realignment recommendations it would forward to the President by September 8, 2005.
- 16. On August 26, 2005, the BRAC Commission voted to adopt defendant Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its recommendations for military installation closure and realignment to the President by September 8, 2005, including the Proposed Realignment.
- 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.
- 18. If the President disapproves any of the BRAC Commission's recommendations, the BRAC Commission has until October 20, 2005 in which to transmit revised recommendations to the President. BRAC Act §§ 2903, 2914.
- 19. If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. BRAC Act §§ 2903, 2914.
- 20. If the President approves either the original or revised recommendations, he must send the approved list and his certification to Congress. If the President approves a revised list, his approval and certification to Congress must occur by November 7, 2005. BRAC Act § 2903, 2914.
- If Congress does not enact a resolution disapproving the approved recommendations within 45 legislative days after receiving them from the President, defendant

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Rumsfeld must close and realign all military installations as recommended. BRAC Act § 2904(a).

### V. NATURE OF THE NATIONAL GUARD

- 22. The National Guard has a dual nature, comprising both units of state militias and a part of the federal armed forces when those units are called into federal service. The National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the United States Constitution. The Washington National Guard constitutes a portion of the reserve component of the armed forces.
- 23. States have the right to control the National Guard when not in federal service. Members of the National Guard serve in the state militia under the command of the Governor unless they are called into federal service.
- 24. The National Guard is the only military force shared by the states and the federal government, and ready to carry out missions for both state and federal purposes.
- 25. The balance struck by Congress between the federal and state nature of the National Guard is reflected in the various statutes requiring the consent of the Governor for decisions which change the personnel and forces available for state duties and the way in which such consent is obtained.
- 26. Currently and during the BRAC process, the Washington Air National Guard's 141<sup>st</sup>, 256<sup>th</sup> and 242<sup>d</sup> units have not been federally mobilized into Title 10 federal status.

#### VI. THE PROPOSED REALIGNMENT

27. Included in defendant Rumsfeld's base closure or realignment list was the following recommendation regarding Fairchild Air Force Base and referred to herein as the Proposed Realignment:

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141<sup>st</sup> Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

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Fairchild Air Force Base, and the 141<sup>st</sup> Air Refueling Wing's eight KC-135R aircraft are distributed to the 185<sup>th</sup> Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, Iowa. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

70 FR 28046, May 16, 2005. See Exhibit A.

- 28. The BRAC Commission voted to approve the basic elements of the Proposed Realignment and include the recommendation in its report to the President for the 2005 closure or realignment of military installations pursuant to the BRAC Act.
- 29. It is expected that the BRAC Commission's report to the President due by September 8, 2005 will include a recommendation on the Proposed Realignment substantially similar to the language contained in defendant Rumsfeld's list as published in the Federal Register.
- 30. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to the Proposed Realignment.
- 31. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to make a change in the location, branch, organization or allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications Squadron, the 242<sup>d</sup> Combat Communications Squadron, or any unit of the Washington Air National Guard.
- 32. If the Governor had been requested during the BRAC process to consent to the Proposed Realignment, Governor Gregoire would not have done so.
- 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire expressed her "strong objections to the Department of Defense's recommendations to the [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling Wing" and stated she "emphatically [did] not consent to the realignment of the 141st Air

Refueling Wing or the removal, relocation, or reassignment of the 141<sup>st</sup>'s unit equipped primary assigned KC-135 aircraft." See Exhibit B.

- 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for such actions." See Exhibit B.
- 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his "proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution." See Exhibit B.
- 36. In recommending the Proposed Realignment, the BRAC Commission contravened the legal advice provided by its own legal counsel in a memorandum dated July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch, organization or allotment, or relocation or withdrawal of a National Guard unit without the consent of the Governor where the unit was located.

# Associating the 141st Air Refueling Wing

- 37. The <u>first</u> portion of the Proposed Realignment would "associate" Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing with the Air Force's 92d Air Refueling Wing at Fairchild.
- 38. In his *Federal Register* notice, Defendant Rumsfield does not define or explain what is meant by his recommendation that the Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also does not define the term "associate".
- 39. The 141<sup>st</sup> Air Refueling Wing is a Washington Air National Guard unit located entirely within the State of Washington, at Fairchild.
- 40. The 141<sup>st</sup> Air Refueling Wing is a self-sustaining unit used for both federal and state missions. Members of the 141<sup>st</sup> have engaged in international, national, regional, state

and local missions, including homeland security and emergency response activities. The 141<sup>st</sup> has been ordered into state active duty status by prior governors of the State to respond to the eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local law enforcement.

41. If the 141<sup>st</sup> Air Refueling Wing were to "associate" with the Air Force's 92d Air Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither the Governor nor the Adjutant General of the Washington Military Department would maintain operational control over the day to day operations of the 141<sup>st</sup>.

# Distributing the 141st's KC-135s

- 42. The <u>second</u> portion of the Proposed Realignment recommends that all eight of the 141<sup>st</sup> Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air National Guard Refueling Wing.
- 43. This recommendation would leave the Washington Air National Guard without any primary authorized fixed wing aircraft.
- 44. Without its eight KC-135R aircraft, the Washington Air National Guard's ability to control required aircraft training missions is eliminated, its ability to maintain air crew readiness is restricted, and its ability to recruit and retain officers and enlisted members within the Washington Air National Guard is substantially reduced.
- 45. The Proposed Realignment of the 141<sup>st</sup> would strip the Governor of all direct emergency access to the 141<sup>st</sup>'s KC-135R aircraft for tactical airlift missions in response to local, state, regional and national emergencies. In addition to refueling capabilities, the KC-135s can be used to meet transport and cargo needs. The 141<sup>st</sup> Air Refueling Wing and its KC-135 aircraft have been integral components of the State's planned response to wildfires, floods and other natural disasters in the State.

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- 46. The Proposed Realignment of the 141<sup>st</sup> would prevent the Governor from carrying out the constitutional and statutory responsibilities of her office to provide for public safety and the security of the homeland.
- 47. In order to provide needed help responding to the devastating effects of Hurricane Katrina, the Governor has approved use of the KC-135 aircraft and members of the 141<sup>st</sup> Air Refueling Wing. The Governor's September 2, 2005 activation of the Washington Air National Guard specifically authorizes use of the KC-135 aircraft. To date, the 141<sup>st</sup> and its KC-135s have moved over 500 National Guard members, 50 tons of cargo and engaged in 35 flying sorties to New Orleans and Gulfport in response to Hurricane Katrina, and these numbers will increase. The Proposed Realignment would prevent the Governor from extending this type of assistance to states under the National Response Plan and the national Emergency Management Assistance Compact.

## Relocating the 256<sup>th</sup>

- 48. The third portion of the Proposed Realignment recommends that Washington Air National Guard's 256<sup>th</sup> Combat Communications Squadron, currently wholly located at the Four Lakes Communication Station outside Cheney, Washington, be "relocated" to Fairchild.
- 49. Four Lakes Communications Station is a federally owned facility under license to the State of Washington.
- 50. Relocating the 256<sup>th</sup> to Fairchild without the Governor's consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia.

# Relocating the 242<sup>d</sup>

- 51. The <u>fourth</u> portion of the Proposed Realignment recommends that Washington Air National Guard's 242<sup>nd</sup> Combat Communications Squadron, currently wholly located at Geiger Field in Spokane, Washington, be "relocated" to Fairchild.
- 52. Geiger Field is not a federally owned facility, it is owned by the State of Washington.

53. Relocating the 242<sup>d</sup> from state-owned land to Fairchild without the Governor's consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia, and impair her ability to interact with and access one of her state National Guard units.

#### VII. FIRST CAUSE OF ACTION

## **Exceeds BRAC Act Authority**

- 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53, inclusive, as though fully set forth herein.
- 55. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or location of the 141<sup>st</sup>, 256<sup>th</sup> and 242<sup>d</sup> units, and the removal and transfer of the Washington Air National Guard's KC-135 aircraft.
- 56. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped or organized.
- 57. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the organization of the Washington Air National Guard.
- 58. Defendants' recommendations to "associate" the 141<sup>st</sup> unit and "distribute" the KC-135s assigned to it are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- 59. Defendants' recommendations to relocate the 256<sup>th</sup> unit and the 242<sup>d</sup> unit are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- 60. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants do not have the authority under the BRAC Act

to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants' authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.

61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

### VIII. SECOND CAUSE OF ACTION

## **Violates 32 U.S.C. § 104**

- 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61, inclusive, as though fully set forth herein.
- 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the units and headquarters of its National Guard".
- 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor".
- 65. The State has fixed the locations of the 141<sup>st</sup>, 256<sup>th</sup> and 242<sup>d</sup> units, which are units located entirely with the State.
- 66. Defendants' Proposed Realignment would change the location, branch, organization and/or allotment of the 141<sup>st</sup>, 256<sup>th</sup> and the 242<sup>d</sup>, and the Governor has not granted her approval for such actions.
- 67. Defendants' Proposed Realignment, without gubernatorial consent, violates 32 U.S.C. § 104.
- 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment, without first obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.

69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

### IX. THIRD CAUSE OF ACTION

## **Violates the Second Amendment**

- 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69, inclusive, as though fully set forth herein.
- 71. Under the Constitution of the United States, authority over the military is divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second Amendment states: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II. The guarantee of the Second Amendment regarding states' rights to a well-regulated militia was made for the purpose of assuring the continuation and effectiveness of state militia.
- 72. Defendants' Proposed Realignment would infringe upon the State's constitutional right to maintain a well regulated militia, and violates the Second Amendment.
- 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional; that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.
- 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

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#### X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against defendants and that the Court grant the following relief:

- An Order declaring that defendants' Proposed Realignment exceeds their Α. statutory authority under the BRAC Act, is null and void, and shall not be implemented;
- An Order declaring that the defendants' Proposed Realignment violates В. 32 U.S.C. § 104, is null and void, and shall not be implemented;
- C. An Order declaring that the defendants' Proposed Realignment violates the Second Amendment to the United States Constitution, is null and void, and shall not be implemented;
- D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and
- E. Further Orders providing such additional legal or equitable relief as this Court may deem just and proper.

DATED this 7<sup>th</sup> day of September, 2005.

Respectfully submitted,

**ROB MCKENNA** Attorney General

Senior Counsel

Attorneys for Plaintiff

Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

#### Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base. CA; Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill. establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

#### Langley Air Force Base, VA

Recommendation: Realign Langley
Air Force Base, VA. Realign base-level
F-15 avionics intermediate maintenance
from Langley Air Force Base to Tyndall
Air Force Base, FL, by establishing a
Centralized Intermediate Repair Facility
(CIRF) at Tyndall Air Force Base, FL, for
F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond nternational Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F-16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing, Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft).

#### Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

# General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

#### Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations

Joint Center of Excellence for Religious Training & Education

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals CHRISTINE O. GREGOIRE
GOVERNOR



#### STATE OF WASHINGTON

## OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98304-0002 • (360) 753-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld Secretary of Defense 1000 Defense Pentagon Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me – and all those who succeed me as Governor of the state of Washington – from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141<sup>st</sup> Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without *any* prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do not consent to the realignment of the 141<sup>st</sup> Air Refueling Wing or the removal, relocation, or reassignment of the 141<sup>st</sup>'s unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

The Honorable Donald H. Rumsfeld August 9, 2005 Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,

Christine Brysin

Christine O. Gregoire

Governor

ce: Anthony J. Principi, Chair, BRAC Commission

The Honorable Maria Cantwell, U.S. Senate

The Honorable Patty Murray, U.S. Senate

The Honorable Brian Baird, U.S. House of Representatives

The Honorable Norm Dicks, U.S. House of Representatives

The Honorable Richard Hastings, U.S. House of Representatives

The Honorable Jay Inslee, U.S. House of Representatives

The Honorable Rick Larsen, U.S. House of Representatives

The Honorable Jim McDermott, U.S. House of Representatives

The Honorable Cathy McMorris, U.S. House of Representatives

The Honorable Dave Reichert, U.S. House of Representatives

The Honorable Adam Smith, U.S. House of Representatives

The Honorable Mike Huckabee, Chair, National Governors Association

Doug Clapp, Office of the Governor

# UNITED STATES DISTRICT COURT

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CHRISTINE O. GREGOIRE, Governo State of Washington,		District of	Washington	
	Plaintiff,		SUMMONS IN A	A CIVIL CASE
V.				
DONALD H. RUMSFELD, in his offici Secretary of Defense; ANTHONY J. F official capacity as Chairman of the E Closure and Realignment Commission BILBRAY, PHILLIP E. COYLE, HARG GEHMAN, JR., JAMES V. HANSEN, LLOYD W. NEWTON, SAMUAL K. S SUE ELLEN TURNER, in their official of the Defense Base Closure and Real	PRINCIPI, in his Defense Base In; and JAMES H. DLD W. JAMES T. HILL, KINNER, and I capacities as mem	bers	CO5	<b>558</b> 3 <sup>4</sup>
TO: (Name and address	Defendants.	• ,		
Samual K. Skinner 2005 Defense Base Closure and 2521 S. Clark St., Suite 600 Arlington, VA 22202		mmission		
YOU ARE HEREBY SUM  Sara J. Finlay, Senior Counsel Office of the Attorney General Government Operations Divisio PO Box 40108	•	ired to serve	on PLAINTIFF'S ATTOI	RNEY (name and address)
an answer to the complaint which is of this summons on you, exclusive of for the relief demanded in the complete of this Court within a reason.  BRUCE RIFK	of the day of service plaint. Any answe able period of time	e. If you fail or that you se	to do so, judgment by def rve on the parties to this e.	days after service ault will be taken against you action must be filed with the
CLEDA		DATE	Ç Fi	
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(By) DEPUTY CLERK ONLY

## **CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFF	S		DEFENDANT	S	
Gregoire, Chr Governor of the	istine O. he State of Washingtor	n	See Attached L	ist	
(b) County of Residen	ce of First Listed Plaintiff	Thurston	County of Residence	Turn Listed Defendant	00
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(c) Attorney's (Firm Nar	ne, Address, and Telephone Nu	mber)	A CEP 0 7 STORY	, \	
Office of the Att	torney General, PO Bo	x 40108, Olympia, W			
	0) 586-2436, Sara J. F		COLIR	L AMOS T	
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150 Recovery of Overpayment & Enforcement of Judgment	320 Assault, Libel & Slander	Product Liability  368 Asbestos Personal	630 Liquor Laws	■ 820 Copyrights	460 Deportation 470 Racketeer Influenced and
1 Medicare Act	330 Federal Employers'	Injury Product	50 Airline Regs.	330 Patent	Corrupt Organizations
52 Recovery of Defaulted Student Loans	Liability  340 Marine	Liability PERSONAL PROPERTY		☐ 840 Trademark	480 Consumer Credit 490 Cable/Sat TV
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153 Recovery of Overpayment of Veteran's Benefits	Liability 350 Motor Vehicle	☐ 371 Truth in Lending ☐ 380 Other Personal	710 Fair Labor Standards	■ 861 HIA (1395ff)	850 Securities/Commodities/ Exchange
☐ 160 Stockholders' Suits ☐ 190 Other Contract	355 Motor Vehicle Product Liability	Property Damage  385 Property Damage	Act 720 Labor/Mgmt. Relations	☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g))	875 Customer Challenge 12 USC 3410
195 Contract Product Liability	360 Other Personal	Product Liability	730 Labor/Mgmt.Reporting	☐ 864 SSID Title XVI	890 Other Statutory Actions
☐ 196 Franchise	Injury MAN LORGORIA	STANDAL FEED STANDARDS	& Disclosure Act  740 Railway Labor Act	☐ 865 RSI (405(g))	891 Agricultural Acts 892 Economic Stabilization Act
210 Land Condemnation	441 Voting	☐ 510 Motions to Vacate	790 Other Labor Litigation	☐ 870 Taxes (U.S. Plaintiff	893 Environmental Matters 894 Energy Allocation Act
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240 Torts to Land 245 Tort Product Liability	Accommodations  444 Welfare	530 General 535 Death Penalty	Į ,	26 USC 7609	Act  900Appeal of Fee Determination
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COMPLAINT:	UNDER F.R.C.P. 2	S A CLASS ACTION 23	DEMIAND 3	JURY DEMAND:	O Yes O No
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## **DEFENDANTS**

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense; PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and BILBRAY, JAMES H.

COYLE, PHILLIP E.

GEHMAN, JR., HAROLD W.

HANSEN, JAMES V.

HILL, JAMES T.

NEWTON, LLOYD W.

SKINNER, SAMUAL K. and

TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and Realignment Commission,



## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CHRISTINE O. GREGOIRE, Governor of the State of Washington,

Plaintiff.

v.

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DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as members of the Defense Base Closure and Realignment Commission,

Defendants.

№C05 558\$

COMPLAINT

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

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capacities as members of the Defense Base Closure and Realignment Commission, as follows:

#### T. NATURE OF THE CASE

- This case arises out of defendants' attempts, unilaterally and without seeking or 1. obtaining approval from the Governor of the State of Washington, to fundamentally change units of the Washington Air National Guard under the guise of a recommendation made pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign Fairchild Air Force Base" contains the following four elements, which will hereafter be collectively referred to as the "Proposed Realignment":
  - the 141st Air Refueling Wing of the Washington Air National Guard will (a) "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane, Washington ("Fairchild"):
  - all eight of the KC-135R aircraft assigned to Washington Air National Guard's 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard Refueling Wing:
  - the 256th Combat Communications Squadron of the Washington Air National (c) Guard currently located at the Four Lakes Communications Station outside Cheney, Washington will be "relocated" to Fairchild; and
  - the 242<sup>nd</sup> Combat Communications Squadron of the Washington Air National (d) Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to Fairchild.
- Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff 2. asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment: (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of federal laws independent of the BRAC Act that expressly grant rights to the State of

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Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and (c) infringes on the right of the State to maintain an organized militia in violation of the Second Amendment to the United States Constitution.

### II. JURISDICTION AND VENUE

- 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.
- 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391 because the official residence of the Governor of the State of Washington is in the Western District of Washington.

### III. PARTIES

- 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and brings this action in her official capacity and on behalf of the State. Pursuant to the Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020), Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are actively in the service of the United States.
- 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense of the United States and, pursuant to the BRAC Act is authorized to make recommendations for the closure and realignment of military installations in the United States to the Defense Base Closure and Realignment Commission, and to implement those recommendations ultimately approved. He is sued in his official capacity only.
- 7. Defendant Anthony J. Principi has been named by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC Commission"). He is sued in his official capacity only.

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8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner have been named by the President of the United States to be members of the BRAC Commission. They are sued in their official capacities only.

#### IV. THE BRAC ACT

- 9. The stated purpose of the BRAC Act is to "provide a fair process that will result in the timely closure and realignment of military installations inside the United States." BRAC Act § 2901(b).
  - 10. As used in the BRAC Act, the term "military installation" is defined as:

a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

BRAC Act § 2910(4).

11. As used in the BRAC Act, the term "realignment" includes:

any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

BRAC Act § 2910(5).

Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the 12. Department of Defense was required to publish in the Federal Register and transmit to the congressional defense committees and the BRAC Commission a "list of the military installations inside the United States that the Secretary recommends for closure or realignment" consistent with the BRAC Act, the force-structure plan and military value and other criteria established thereunder. Defendant Rumsfeld submitted his BRAC recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in the May 16, 2005 Federal Register.

- 13. Defendant Rumsfeld's BRAC recommendations included the Proposed Realignment an issue in this case.
- 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is empowered to consider the recommendations of the Secretary of Defense and make recommendations to the President of the United States for the closure and realignment of military installations consistent with the BRAC Act.
- 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27, 2005 to consider and make the base closure and realignment recommendations it would forward to the President by September 8, 2005.
- 16. On August 26, 2005, the BRAC Commission voted to adopt defendant Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its recommendations for military installation closure and realignment to the President by September 8, 2005, including the Proposed Realignment.
- 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.
- 18. If the President disapproves any of the BRAC Commission's recommendations, the BRAC Commission has until October 20, 2005 in which to transmit revised recommendations to the President. BRAC Act §§ 2903, 2914.
- 19. If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. BRAC Act §§ 2903, 2914.
- 20. If the President approves either the original or revised recommendations, he must send the approved list and his certification to Congress. If the President approves a revised list, his approval and certification to Congress must occur by November 7, 2005. BRAC Act § 2903, 2914.
- 21. If Congress does not enact a resolution disapproving the approved recommendations within 45 legislative days after receiving them from the President, defendant

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BRAC. Rumsfeld must close and realign all military installations as recommended. Act § 2904(a).

#### V. NATURE OF THE NATIONAL GUARD

- 22. The National Guard has a dual nature, comprising both units of state militias and a part of the federal armed forces when those units are called into federal service. The National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the United States Constitution. The Washington National Guard constitutes a portion of the reserve component of the armed forces.
- 23. States have the right to control the National Guard when not in federal service. Members of the National Guard serve in the state militia under the command of the Governor unless they are called into federal service.
- 24. The National Guard is the only military force shared by the states and the federal government, and ready to carry out missions for both state and federal purposes.
- 25. The balance struck by Congress between the federal and state nature of the National Guard is reflected in the various statutes requiring the consent of the Governor for decisions which change the personnel and forces available for state duties and the way in which such consent is obtained.
- 26. Currently and during the BRAC process, the Washington Air National Guard's 141st, 256th and 242d units have not been federally mobilized into Title 10 federal status.

#### VI. THE PROPOSED REALIGNMENT

27. Included in defendant Rumsfeld's base closure or realignment list was the following recommendation regarding Fairchild Air Force Base and referred to herein as the Proposed Realignment:

Fairchild Air Force Base, WA

The 141st Air Recommendation: Realign Fairchild Air Force Base, WA. Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

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Fairchild Air Force Base, and the 141<sup>st</sup> Air Refueling Wing's eight KC-135R aircraft are distributed to the 185<sup>th</sup> Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, Iowa. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

70 FR 28046, May 16, 2005. See Exhibit A.

- 28. The BRAC Commission voted to approve the basic elements of the Proposed Realignment and include the recommendation in its report to the President for the 2005 closure or realignment of military installations pursuant to the BRAC Act.
- 29. It is expected that the BRAC Commission's report to the President due by September 8, 2005 will include a recommendation on the Proposed Realignment substantially similar to the language contained in defendant Rumsfeld's list as published in the Federal Register.
- 30. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to the Proposed Realignment.
- 31. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to make a change in the location, branch, organization or allotment of the 141<sup>st</sup> Air Refueling Wing or its KC-135s, the 256<sup>th</sup> Combat Communications Squadron, the 242<sup>d</sup> Combat Communications Squadron, or any unit of the Washington Air National Guard.
- 32. If the Governor had been requested during the BRAC process to consent to the Proposed Realignment, Governor Gregoire would not have done so.
- 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire expressed her "strong objections to the Department of Defense's recommendations to the [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling Wing" and stated she "emphatically [did] not consent to the realignment of the 141st Air

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Refueling Wing or the removal, relocation, or reassignment of the 141st, unit equipped primary assigned KC-135 aircraft." See Exhibit B.

- 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for such actions." See Exhibit B.
- 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his "proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution." See Exhibit B.
- 36. In recommending the Proposed Realignment, the BRAC Commission contravened the legal advice provided by its own legal counsel in a memorandum dated July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch, organization or allotment, or relocation or withdrawal of a National Guard unit without the consent of the Governor where the unit was located.

# Associating the 141st Air Refueling Wing

- **37**. <sup>1</sup> The first portion of the Proposed Realignment would "associate" Washington Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing at Fairchild.
- 38. In his Federal Register notice, Defendant Rumsfield does not define or explain what is meant by his recommendation that the Washington Air National Guard's 141st Air Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also does not define the term "associate".
- The 141st Air Refueling Wing is a Washington Air National Guard unit located 39. entirely within the State of Washington, at Fairchild.
- The 141st Air Refueling Wing is a self-sustaining unit used for both federal and 40. state missions. Members of the 141st have engaged in international, national, regional, state

and local missions, including homeland security and emergency response activities. The 141<sup>st</sup> has been ordered into state active duty status by prior governors of the State to respond to the eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local law enforcement.

41. If the 141<sup>st</sup> Air Refueling Wing were to "associate" with the Air Force's 92d Air Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither the Governor nor the Adjutant General of the Washington Military Department would maintain operational control over the day to day operations of the 141<sup>st</sup>.

## Distributing the 141<sup>st</sup>'s KC-135s

- 42. The <u>second</u> portion of the Proposed Realignment recommends that all eight of the 141<sup>st</sup> Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air National Guard Refueling Wing.
- 43. This recommendation would leave the Washington Air National Guard without any primary authorized fixed wing aircraft.
- 44. Without its eight KC-135R aircraft, the Washington Air National Guard's ability to control required aircraft training missions is eliminated, its ability to maintain air crew readiness is restricted, and its ability to recruit and retain officers and enlisted members within the Washington Air National Guard is substantially reduced.
- 45. The Proposed Realignment of the 141<sup>st</sup> would strip the Governor of all direct emergency access to the 141<sup>st</sup>'s KC-135R aircraft for tactical airlift missions in response to local, state, regional and national emergencies. In addition to refueling capabilities, the KC-135s can be used to meet transport and cargo needs. The 141<sup>st</sup> Air Refueling Wing and its KC-135 aircraft have been integral components of the State's planned response to wildfires, floods and other natural disasters in the State.

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- The Proposed Realignment of the 141<sup>st</sup> would prevent the Governor from 46. carrying out the constitutional and statutory responsibilities of her office to provide for public safety and the security of the homeland.
- 47. In order to provide needed help responding to the devastating effects of Hurricane Katrina, the Governor has approved use of the KC-135 aircraft and members of the 141st Air Refueling Wing. The Governor's September 2, 2005 activation of the Washington Air National Guard specifically authorizes use of the KC-135 aircraft. To date, the 141st and its KC-135s have moved over 500 National Guard members, 50 tons of cargo and engaged in 35 flying sorties to New Orleans and Gulfport in response to Hurricane Katrina, and these numbers will increase. The Proposed Realignment would prevent the Governor from extending this type of assistance to states under the National Response Plan and the national **Emergency Management Assistance Compact.**

# Relocating the 256th

- 48. The third portion of the Proposed Realignment recommends that Washington Air National Guard's 256th Combat Communications Squadron, currently wholly located at the Four Lakes Communication Station outside Cheney, Washington, be "relocated" to Fairchild.
- 49. Four Lakes Communications Station is a federally owned facility under license to the State of Washington.
- Relocating the 256<sup>th</sup> to Fairchild without the Governor's consent would impair 50. the Governor's rights and obligations as Commander-in-Chief of the state militia.

# Relocating the 242<sup>a</sup>

- 51. The <u>fourth</u> portion of the Proposed Realignment recommends that Washington Air National Guard's 242<sup>nd</sup> Combat Communications Squadron, currently wholly located at Geiger Field in Spokane, Washington, be "relocated" to Fairchild.
- Geiger Field is not a federally owned facility, it is owned by the State of 52. Washington.

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Relocating the 242<sup>d</sup> from state-owned land to Fairchild without the Governor's 53. consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia, and impair her ability to interact with and access one of her state National Guard units.

#### VII. FIRST CAUSE OF ACTION

## **Exceeds BRAC Act Authority**

- 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53, inclusive, as though fully set forth herein.
- Defendants exceeded their BRAC statutory authority by inappropriately 55. attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or location of the 141st, 256th and 242d units, and the removal and transfer of the Washington Air National Guard's KC-135 aircraft.
- 56. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped or organized.
- Defendants exceeded their BRAC statutory authority by inappropriately 57. attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the organization of the Washington Air National Guard.
- Defendants' recommendations to "associate" the 141st unit and "distribute" the 58. KC-135s assigned to it are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- Defendants' recommendations to relocate the 256th unit and the 242d unit are 59. not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a 60. Declaratory Judgment declaring that defendants do not have the authority under the BRAC Act

to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants' authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.

61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

## VIII. SECOND CAUSE OF ACTION

## **Violates 32 U.S.C. § 104**

- 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61, inclusive, as though fully set forth herein.
- 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the units and headquarters of its National Guard".
- 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor".
- 65. The State has fixed the locations of the 141<sup>st</sup>, 256<sup>th</sup> and 242<sup>d</sup> units, which are units located entirely with the State.
- 66. Defendants' Proposed Realignment would change the location, branch, organization and/or allotment of the 141<sup>st</sup>, 256<sup>th</sup> and the 242<sup>d</sup>, and the Governor has not granted her approval for such actions.
- 67. Defendants' Proposed Realignment, without gubernatorial consent, violates 32 U.S.C. § 104.
- 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment, without first obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

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may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.

69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

#### IX. THIRD CAUSE OF ACTION

## Violates the Second Amendment

- 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69, inclusive, as though fully set forth herein.
- 71. Under the Constitution of the United States, authority over the military is divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second Amendment states: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II. The guarantee of the Second Amendment regarding states' rights to a well-regulated militia was made for the purpose of assuring the continuation and effectiveness of state militia.
- 72. Proposed Realignment would infringe upon the State's Defendants' constitutional right to maintain a well regulated militia, and violates the Second Amendment.
- 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional; that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.
- 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

### X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against defendants and that the Court grant the following relief:

- A. An Order declaring that defendants' Proposed Realignment exceeds their statutory authority under the BRAC Act, is null and void, and shall not be implemented;
- B. An Order declaring that the defendants' Proposed Realignment violates 32 U.S.C. § 104, is null and void, and shall not be implemented;
- C. An Order declaring that the defendants' Proposed Realignment violates the Second Amendment to the United States Constitution, is null and void, and shall not be implemented;
- D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and
- E. Further Orders providing such additional legal or equitable relief as this Court may deem just and proper.

DATED this 7th day of September, 2005.

Respectfully submitted,

ROB MCKENNA Attorney General

SARA J. FINLAY, WSBA #/821

Senior Counsel

Attorneys for Plaintiff

Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

### Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base. CA: Mountain Home Air Force Base, ID: and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill. establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

### Langley Air Force Base, VA

Recommendation: Realign Langley
Air Force Base, VA. Realign base-level
F-15 avionics intermediate maintenance
from Langley Air Force Base to Tyndall
Air Force Base, FL, by establishing a
Centralized Intermediate Repair Facility
(CIRF) at Tyndall Air Force Base, FL, for
F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond nternational Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F-16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft)

### Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

#### General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL: and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations

Joint Center of Excellence for Religious Training & Education

Recommendation: Realign Maxwell
Air Force Base, AL; Naval Air Station
Meridian, MS; and Naval Station
Newport, RI, by relocating religious
training and education to Fort Jackson,
SC, establishing a Joint Center of
Excellence for religious training and
education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE Q. GREGOIRE
GOVERNOR



### STATE OF WASHINGTON

## OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld Secretary of Defense 1000 Defense Pentagon Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me – and all those who succeed me as Governor of the state of Washington – from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141<sup>st</sup> Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without any prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do not consent to the realignment of the 141<sup>st</sup> Air Refueling Wing or the removal, relocation, or reassignment of the 141<sup>st</sup>'s unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

The Honorable Donald H. Rumsfeld August 9, 2005 Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,

Christine O. Gregoire

Christine O. Gregoire Governor

cc: Anthony J. Principi, Chair, BRAC Commission

The Honorable Maria Cantwell, U.S. Senate

The Honorable Patty Murray, U.S. Senate

The Honorable Brian Baird, U.S. House of Representatives

The Honorable Norm Dicks, U.S. House of Representatives

The Honorable Richard Hastings, U.S. House of Representatives

The Honorable Jay Inslee, U.S. House of Representatives

The Honorable Rick Larsen, U.S. House of Representatives

The Honorable Jim McDermott, U.S. House of Representatives

The Honorable Cathy McMorris, U.S. House of Representatives

The Honorable Dave Reichert, U.S. House of Representatives

The Honorable Adam Smith, U.S. House of Representatives

The Honorable Mike Huckabee, Chair, National Governors Association

Doug Clapp, Office of the Governor

# UNITED STATES DISTRICT COURT

Western District of Washington CHRISTINE O. GREGOIRE, Governor of the State of Washington, Plaintiff. SUMMONS IN A CIVIL CASE V. DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his CO5 55883KA CASE NUMBER: official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as members of the Defense Base Closure and Realignment Commission, Defendants. TO: (Name and address of Defendant) Sue Ellen Turner 2005 Defense Base Closure and Realignment Commission 2521 S. Clark St., Suite 600 Arlington, VA 22202 YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address) Sara J. Finlay, Senior Counsel Office of the Attorney General **Government Operations Division** PO Box 40108 Olympia, WA 98504-0108 an answer to the complaint which is served on you with this summons, within \_\_\_\_\_ 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service. BRUCE RIFKIN 

DATE

(By) DEPUTY CLERK

CLERK

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating e civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

1. (a) PLAINTIFF	S	DEFENDANT	S	
Gregoire, Chr Governor of t	ristine O. he State of Washington	See Attached I	List	
	nce of First Listed Plaintiff Thurston (EXCEPT IN U.S. PLAINTIFF CASES)	L.	DOGE (INVLS. PLANTIFICASE	USE THE DOCATION OF THE
Office of the At	me, Address, and Telephone Number) torney General, PO Box 40108, Olympia, W. 50) 586-2436, Sara J. Finlay, Sr. Counse	Attorneys and Sep 1 Attorn	INVO VED.	
II. BASIS OF JURIS	DICTION (Place an "X" in One Box Only)	III. CITIZENSHTROP	PRINCIPAL PARTIE	S(Place an "X" in One Box for Plaintiff
1 U.S. Government Plaintiff	O 3 Federal Question (U.S. Government Not a Party)	WESTERN DISTRICTURED Cases Only Citizen of This State	PTF DEF O 1	S(Place an "X" in One Box for Plaintiff and One Box for Defendant) PTF DEF Principal Place
2 U.S. Government Defendant	(Indicate Citizenship of Parties in Item III)	Citizen of Another State	2 2 Incorporated and of Business In	Principal Place 5 5 5
		Citizen or Subject of a [ Foreign Country	3 G 3 Foreign Nation	06 06
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🗓 1 Original 🗇 2 Res	te Court Appellate Court	Reinstated or another Reopened (specific		Appeal to District Judge from Magistrate Judgment
/I. CAUSE OF ACTIO	Cite the U.S. Civil Statute under which you are fill U.S. Const. 2nd Amendment, 10 U.S.C.  Brief description of cause: Defendants' Air National Guard base			S. Constitution
II. REQUESTED IN COMPLAINT:	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$		f demanded in complaint:
III. RELATED CASE( IF ANY	S) (See instructions): JUDGE		DOCKET NUMBER	
SIGNATURE OF ATTORNEY OF RECORD  7/2005  FICE USE ONLY				
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE				

## **DEFENDANTS**

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense;
PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and
BILBRAY, JAMES H.
COYLE, PHILLIP E.
GEHMAN, JR., HAROLD W.
HANSEN, JAMES V.
HILL, JAMES T.
NEWTON, LLOYD W.
SKINNER, SAMUAL K. and
TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and Realignment Commission,



## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CHRISTINE O. GREGOIRE, Governor of the State of Washington,

Plaintiff.

v.

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DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as members of the Defense Base Closure and Realignment Commission,

Defendants.

NC05 558\$

COMPLAINT

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

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capacities as members of the Defense Base Closure and Realignment Commission, as follows:

#### I. NATURE OF THE CASE

- 1. This case arises out of defendants' attempts, unilaterally and without seeking or obtaining approval from the Governor of the State of Washington, to fundamentally change units of the Washington Air National Guard under the guise of a recommendation made pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign Fairchild Air Force Base" contains the following four elements, which will hereafter be collectively referred to as the "Proposed Realignment":
  - the 141st Air Refueling Wing of the Washington Air National Guard will (a) "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane, Washington ("Fairchild"):
  - all eight of the KC-135R aircraft assigned to Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing will be "distributed" to an Iowa Air National Guard Refueling Wing;
  - the 256<sup>th</sup> Combat Communications Squadron of the Washington Air National (c) Guard currently located at the Four Lakes Communications Station outside Cheney, Washington will be "relocated" to Fairchild; and
  - the 242<sup>nd</sup> Combat Communications Squadron of the Washington Air National (d) Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to Fairchild.
- Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff 2. asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment: (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of federal laws independent of the BRAC Act that expressly grant rights to the State of

Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and (c) infringes on the right of the State to maintain an organized militia in violation of the Second Amendment to the United States Constitution.

### II. JURISDICTION AND VENUE

- 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.
- 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391 because the official residence of the Governor of the State of Washington is in the Western District of Washington.

### III. PARTIES

- 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and brings this action in her official capacity and on behalf of the State. Pursuant to the Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020), Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are actively in the service of the United States.
- 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense of the United States and, pursuant to the BRAC Act is authorized to make recommendations for the closure and realignment of military installations in the United States to the Defense Base Closure and Realignment Commission, and to implement those recommendations ultimately approved. He is sued in his official capacity only.
- 7. Defendant Anthony J. Principi has been named by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC Commission"). He is sued in his official capacity only.

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8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner have been named by the President of the United States to be members of the BRAC Commission. They are sued in their official capacities only.

#### IV. THE BRAC ACT

- 9. The stated purpose of the BRAC Act is to "provide a fair process that will result in the timely closure and realignment of military installations inside the United States." BRAC Act § 2901(b).
  - 10. As used in the BRAC Act, the term "military installation" is defined as:

a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

BRAC Act § 2910(4).

11. As used in the BRAC Act, the term "realignment" includes:

any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

BRAC Act § 2910(5).

12. Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the Department of Defense was required to publish in the Federal Register and transmit to the congressional defense committees and the BRAC Commission a "list of the military installations inside the United States that the Secretary recommends for closure or realignment" consistent with the BRAC Act, the force-structure plan and military value and other criteria established thereunder. Defendant Rumsfeld submitted his BRAC recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in the May 16, 2005 Federal Register.

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- Defendant Rumsfeld's BRAC recommendations included the Proposed 13. Realignment an issue in this case.
- 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is empowered to consider the recommendations of the Secretary of Defense and make recommendations to the President of the United States for the closure and realignment of military installations consistent with the BRAC Act.
- 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27, 2005 to consider and make the base closure and realignment recommendations it would forward to the President by September 8, 2005.
- 16. On August 26, 2005, the BRAC Commission voted to adopt defendant Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its recommendations for military installation closure and realignment to the President by September 8, 2005, including the Proposed Realignment.
- 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.
- 18. If the President disapproves any of the BRAC Commission's recommendations, the BRAC Commission has until October 20, 2005 in which to transmit revised recommendations to the President. BRAC Act §§ 2903, 2914.
- 19. If the President disapproves the revised recommendations, the 2005 BRAC process is terminated. BRAC Act §§ 2903, 2914.
- If the President approves either the original or revised recommendations, he 20. must send the approved list and his certification to Congress. If the President approves a revised list, his approval and certification to Congress must occur by November 7, 2005. BRAC Act § 2903, 2914.
- If Congress does not enact a resolution disapproving the approved 21. recommendations within 45 legislative days after receiving them from the President, defendant

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BRAC Rumsfeld must close and realign all military installations as recommended. Act § 2904(a).

#### V. NATURE OF THE NATIONAL GUARD

- 22. The National Guard has a dual nature, comprising both units of state militias and a part of the federal armed forces when those units are called into federal service. The National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the United States Constitution. The Washington National Guard constitutes a portion of the reserve component of the armed forces.
- 23. States have the right to control the National Guard when not in federal service. Members of the National Guard serve in the state militia under the command of the Governor unless they are called into federal service.
- The National Guard is the only military force shared by the states and the 24. federal government, and ready to carry out missions for both state and federal purposes.
- 25. The balance struck by Congress between the federal and state nature of the National Guard is reflected in the various statutes requiring the consent of the Governor for decisions which change the personnel and forces available for state duties and the way in which such consent is obtained.
- Currently and during the BRAC process, the Washington Air National Guard's 26. 141st, 256th and 242d units have not been federally mobilized into Title 10 federal status.

#### VI. THE PROPOSED REALIGNMENT

27. Included in defendant Rumsfeld's base closure or realignment list was the following recommendation regarding Fairchild Air Force Base and referred to herein as the Proposed Realignment:

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

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Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185<sup>th</sup> Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, Iowa. The 256<sup>th</sup> Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

70 FR 28046, May 16, 2005. See Exhibit A.

- 28. The BRAC Commission voted to approve the basic elements of the Proposed Realignment and include the recommendation in its report to the President for the 2005 closure or realignment of military installations pursuant to the BRAC Act.
- 29. It is expected that the BRAC Commission's report to the President due by September 8, 2005 will include a recommendation on the Proposed Realignment substantially similar to the language contained in defendant Rumsfeld's list as published in the Federal Register.
- 30. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to the Proposed Realignment.
- 31. At no time during the BRAC process did any of the defendants request or obtain the consent of Governor Gregoire to make a change in the location, branch, organization or allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications Squadron, the 242<sup>d</sup> Combat Communications Squadron, or any unit of the Washington Air National Guard.
- 32. If the Governor had been requested during the BRAC process to consent to the Proposed Realignment, Governor Gregoire would not have done so.
- 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire expressed her "strong objections to the Department of Defense's recommendations to the [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling Wing" and stated she "emphatically [did] not consent to the realignment of the 141st Air

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Refueling Wing or the removal, relocation, or reassignment of the 141st, s unit equipped primary assigned KC-135 aircraft." See Exhibit B.

- 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for such actions." See Exhibit B.
- 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his "proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution." See Exhibit B.
- 36. In recommending the Proposed Realignment, the BRAC Commission contravened the legal advice provided by its own legal counsel in a memorandum dated July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch, organization or allotment, or relocation or withdrawal of a National Guard unit without the consent of the Governor where the unit was located.

# Associating the 141<sup>st</sup> Air Refueling Wing

- 37. The first portion of the Proposed Realignment would "associate" Washington Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing at Fairchild.
- 38. In his Federal Register notice, Defendant Rumsfield does not define or explain what is meant by his recommendation that the Washington Air National Guard's 141st Air Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also does not define the term "associate".
- The 141st Air Refueling Wing is a Washington Air National Guard unit located 39. entirely within the State of Washington, at Fairchild.
- 40. The 141<sup>st</sup> Air Refueling Wing is a self-sustaining unit used for both federal and state missions. Members of the 141st have engaged in international, national, regional, state

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and local missions, including homeland security and emergency response activities. The 141st has been ordered into state active duty status by prior governors of the State to respond to the eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local law enforcement.

If the 141<sup>st</sup> Air Refueling Wing were to "associate" with the Air Force's 92d Air 41. Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither the Governor nor the Adjutant General of the Washington Military Department would maintain operational control over the day to day operations of the 141<sup>st</sup>.

# Distributing the 141<sup>st</sup>'s KC-135s

- 42. The second portion of the Proposed Realignment recommends that all eight of the 141st Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air National Guard Refueling Wing.
- 43. This recommendation would leave the Washington Air National Guard without any primary authorized fixed wing aircraft.
- 44. Without its eight KC-135R aircraft, the Washington Air National Guard's ability to control required aircraft training missions is eliminated, its ability to maintain air crew readiness is restricted, and its ability to recruit and retain officers and enlisted members within the Washington Air National Guard is substantially reduced.
- The Proposed Realignment of the 141st would strip the Governor of all direct 45. emergency access to the 141st's KC-135R aircraft for tactical airlift missions in response to local, state, regional and national emergencies. In addition to refueling capabilities, the KC-135s can be used to meet transport and cargo needs. The 141st Air Refueling Wing and its KC-135 aircraft have been integral components of the State's planned response to wildfires, floods and other natural disasters in the State.

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- 46. The Proposed Realignment of the 141st would prevent the Governor from carrying out the constitutional and statutory responsibilities of her office to provide for public safety and the security of the homeland.
- 47. In order to provide needed help responding to the devastating effects of Hurricane Katrina, the Governor has approved use of the KC-135 aircraft and members of the 141st Air Refueling Wing. The Governor's September 2, 2005 activation of the Washington Air National Guard specifically authorizes use of the KC-135 aircraft. To date, the 141st and its KC-135s have moved over 500 National Guard members, 50 tons of cargo and engaged in 35 flying sorties to New Orleans and Gulfport in response to Hurricane Katrina, and these numbers will increase. The Proposed Realignment would prevent the Governor from extending this type of assistance to states under the National Response Plan and the national Emergency Management Assistance Compact.

# Relocating the 256<sup>th</sup>

- 48. The third portion of the Proposed Realignment recommends that Washington Air National Guard's 256th Combat Communications Squadron, currently wholly located at the Four Lakes Communication Station outside Cheney, Washington, be "relocated" to Fairchild.
- 49. Four Lakes Communications Station is a federally owned facility under license to the State of Washington.
- Relocating the 256<sup>th</sup> to Fairchild without the Governor's consent would impair 50. the Governor's rights and obligations as Commander-in-Chief of the state militia.

# Relocating the 242<sup>d</sup>

- 51. The fourth portion of the Proposed Realignment recommends that Washington Air National Guard's 242<sup>nd</sup> Combat Communications Squadron, currently wholly located at Geiger Field in Spokane, Washington, be "relocated" to Fairchild.
- Geiger Field is not a federally owned facility, it is owned by the State of 52. Washington.

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Relocating the 242<sup>d</sup> from state-owned land to Fairchild without the Governor's 53. consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia, and impair her ability to interact with and access one of her state National Guard units.

#### VII. FIRST CAUSE OF ACTION

## **Exceeds BRAC Act Authority**

- 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53, inclusive, as though fully set forth herein.
- 55. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or location of the 141st, 256th and 242d units, and the removal and transfer of the Washington Air National Guard's KC-135 aircraft.
- 56. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped or organized.
- 57. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the organization of the Washington Air National Guard.
- Defendants' recommendations to "associate" the 141st unit and "distribute" the 58. KC-135s assigned to it are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- Defendants' recommendations to relocate the 256th unit and the 242d unit are 59. not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.
- 60. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants do not have the authority under the BRAC Act

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to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants' authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.

61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

### VIII. SECOND CAUSE OF ACTION

## **Violates 32 U.S.C. § 104**

- 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61, inclusive, as though fully set forth herein.
- 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the units and headquarters of its National Guard".
- 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor".
- The State has fixed the locations of the 141st, 256th and 242d units, which are 65. units located entirely with the State.
- 66. Defendants' Proposed Realignment would change the location, branch, organization and/or allotment of the 141st, 256th and the 242d, and the Governor has not granted her approval for such actions.
- 67. Defendants' Proposed Realignment, without gubernatorial consent, violates 32 U.S.C. § 104.
- 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment, without first obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

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may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.

69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

#### IX. THIRD CAUSE OF ACTION

## Violates the Second Amendment

- 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69, inclusive, as though fully set forth herein.
- 71. Under the Constitution of the United States, authority over the military is divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second Amendment states: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II. The guarantee of the Second Amendment regarding states' rights to a well-regulated militia was made for the purpose of assuring the continuation and effectiveness of state militia.
- 72. Proposed Realignment would infringe upon the State's Defendants' constitutional right to maintain a well regulated militia, and violates the Second Amendment.
- 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional; that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring that the Proposed Realignment is null and void.
- 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and as Commander-in-Chief of the Washington National Guard.

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#### X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against defendants and that the Court grant the following relief:

- A. An Order declaring that defendants' Proposed Realignment exceeds their statutory authority under the BRAC Act, is null and void, and shall not be implemented;
- An Order declaring that the defendants' Proposed Realignment violates 32 U.S.C. § 104, is null and void, and shall not be implemented;
- C. An Order declaring that the defendants' Proposed Realignment violates the Second Amendment to the United States Constitution, is null and void, and shall not be implemented;
- D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and
- E. Further Orders providing such additional legal or equitable relief as this Court may deem just and proper.

DATED this 7th day of September, 2005.

Respectfully submitted,

**ROB MCKENNA** Attorney General

Senior Counsel

Attorneys for Plaintiff

Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base. CA; Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill, establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

#### Langley Air Force Base, VA

Recommendation: Realign Langley
Air Force Base, VA. Realign base-level
F-15 avionics intermediate maintenance
from Langley Air Force Base to Tyndall
Air Force Base, FL, by establishing a
Centralized Intermediate Repair Facility
(CIRF) at Tyndall Air Force Base, FL, for
F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond international Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F-16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft).

### Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

General Mitchell Air Reserve Station,

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations

Joint Center of Excellence for Religious Training & Education

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE Q. GREGOIRE
GOVERNOR



### STATE OF WASHINGTON

# OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld Secretary of Defense 1000 Defense Pentagon Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141<sup>st</sup> Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me — and all those who succeed me as Governor of the state of Washington — from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141<sup>st</sup> Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without any prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do not consent to the realignment of the 141<sup>st</sup> Air Refueling Wing or the removal, relocation, or reassignment of the 141<sup>st</sup>'s unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

The Honorable Donald H. Rumafeld August 9, 2005 Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,

Christine O. Gragoire Governor

Authony J. Principi, Chair, BRAC Commission
The Honorable Maria Cantwell, U.S. Senate
The Honorable Patry Murray, U.S. Senate
The Honorable Brian Baird, U.S. House of Representatives
The Honorable Richard Hastings, U.S. House of Representatives
The Honorable Richard Hastings, U.S. House of Representatives
The Honorable By Inslee, U.S. House of Representatives
The Honorable Bay Inslee, U.S. House of Representatives
The Honorable Dave Reichert, U.S. House of Representatives
The Honorable Dave Reichert, U.S. House of Representatives
The Honorable Dave Reichert, U.S. House of Representatives
The Honorable Mike Huckabee, Chair, National Governors Association
Doug Clapp, Office of the Governor